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(Pass on the Cod Liver Oil)

2000
2000
2000
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PRESIDENTIAL CANDIDATES 2000

by William E. Saracino

How home schoolers defeated Monrovia's daytime curfew
by James Bemis

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CORRESPONDENCE

Judicial Blackout

Regarding Mark S. Pulliam's "The Law — The Year in Review" (*CPR*, January/February 1999): How, oh how are we to judge the judges?

I have, in the past, written to then-Secretary of State [Bill] Jones, to the California Republican Party, local and state, asking why there is not more information on judges in the Voters Pamphlet and Sample Ballots. They all appear to be in agreement there probably should be, but I have seen no information at all.

For this last November 1998 election my ballot had four Supreme Court Justices and 11 Appellate Court Justices. Except for *CPR's* articles on Ron George, Ming Chin, Janice Brown, and Stanley Mosk, I had no further information on which to base my decision. A very brief article appeared, not on the front page, in the local *Daily Triplicate* of Crescent City when Ron George voted against parental notification when a minor wanted an abortion.

Arguments — pro and con — for ballot measures and statements by and for political candidates are in the voters pamphlet, but nothing about judges.

Although I am neither Republican or Democrat, since I subscribe to *California Political Review*, you can rightly assume I am conservative. I do not like judges who are liberal activists and overturn a majority of the voters when a ballot measure is passed. I also strongly disagree with Ron George, *et al*, and believe a parent has a right to know when a child is pregnant and contemplating an abortion!

How can the average citizen judge the judge when no information is forthcoming and in fact basically withheld from the public? Hopefully with your influence, stronger than this 70-year-old man can exert, you can at least lobby in some way for information and statements in the Voters Pamphlet by the next election.

Hoping you can make a difference.

Clair A. Hyatt
Crescent City

John Kurzweil responds:

Many thanks for your kind words. I would only add that ours is a system of self-government. If the people demand to know about the judges, they will be told; but, depend upon it, if we all do not force them to inform us, they will do everything they can to keep us in the dark. I am not excusing those in power, but the people too often simply blame those at the top without realizing that they always have it in their own power to force the system to work as it should.

Mothered to Distraction II

You are correct that abortion has no more to do with sex than perjury ("Mothered to Distraction," Correspondence, *CPR*, January/February 1999). Although I differ with your position, I respect it. In some areas we may even agree, and I say that as a father of three lovely daughters (two in college and one on the way). My daughters are not nuns but they do have their feet firmly planted in a moral foundation that took years to develop. I expect great things of them, even if their careers never extend beyond housewife. They will raise my grandchildren.

What I was suggesting in my letter was that in today's climate any political discussion of abortion will be used as a wedge issue by Democrats who will hammer home that prolife candidates want to regulate California's bedrooms. While this topic should be one of many issues, it has reached a point where it can no longer be rationally addressed by any sector. Until this changes, prolife candidates will continue to be vulnerable in a pro-choice state.

Guns and tobacco are fast reaching

(Please turn to page 25)

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SACRAMENTO SPECTATOR

Billie Holiday used to put it so serenely: "Don't know why, there are clouds up in the sky, stormy weather ... it's raining all the time." And stormy weather it is in the Big Tomato, both outside and inside the dome. Your *Spectator* drives away the chills with the well-known curative combo — cigars and extra-dry martinis — knowing that spring will end the gloom, at least outside of the Capitol.

Inside, walking into any legislative Republican's office is, well, "bracing" — like walking into a cold morning rain. The Assembly and Senate GOP appear demoralized, both legislators and staff. Assembly GOP Leader Rod Pacheco is dealing with especially low staff morale. Some top quality staff have jumped over to work for the Senate Republicans. Some top quality conservative staff have simply been let go. Those that are left ponder whether they are more like the GIs at Bastogne or Bataan. One had a happy ending, the other.....

By the time you read this the "moderate" slate at the state GOP convention will have gone down in well-deserved flames. Count on these moderate party-builders to have made the convention as bloody as possible. Also count on them getting kid glove treatment from the "hate conservatives" crowd in the media. Do *not* count on any of them actually doing anything constructive for the GOP. They actually are remarkably *un*-moderate, for the most part vindictive haters, without a clue as to the real meaning of "Party unity."

Your *Spectator* happens to know that at least two people Brooks Firestone called for help in his race for vice chairman against Shawn Steel told him

that a) he could not possibly win; b) the only conceivable outcome of his candidacy would be further intra-Party bloodshed and; c) If he and a few other wealthy "moderates" *really* wanted to help the GOP and earn brownie points at the same time they should sign on with the McGraw-Steel team as fund raisers. This, Brooks was wisely advised, would not only help the Party (something he swears he wants to do) but also put Brooks in good standing to run for a statewide Party office next time around. The silence in response to this suggestion was deafening, but at the same time it speaks volumes about the petty mindset of these folks.

As to their assertion that "only" a pro-abort, anti-gun GOP candidate can win statewide anymore, I've tried to get a response to that from Senators Ed Zschau and John Seymour, as well as from Governor Hugh Flournoy. I'll keep you posted.

And to close on a "with friends like this" note, Sen. Jim Brulte recently received a big wet kiss in print from ultra-lib *Sacramento Bee* columnist John Jacobs. Jacobs positively gushed about big Jim being the "future" of the GOP. The problem for Brulte of course is that most folks know John Jacobs as a knee-jerk, mean-spirited and rabid opponent of all things conservative. An endorsement by Jacobs of a Republican is akin to Sadaam Hussein having a candidate for Chief Rabbi of Jerusalem.

To make this wicket even stickier, Jacobs also quoted Bill Lockyer!!! with effusive praise of Brulte's legislative abilities and willingness "to compromise." Something seems amiss. Jacobs is smart enough to know a kind word from him would damage anyone to the right of Maxine Waters — territory that Jacobs himself has never occupied. I shall put on my deerstalker and try to determine exactly what game is afoot. Details to come along with the spring sunshine.

— A. P. C.

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The People's Lawyer

If this sounds like the title of a bad TV sitcom, that's because it is. And a sixties re-run to boot.

MARK S. PULLIAM

NEVER FEAR; the "people's lawyer" is here. At last we are safe from the predations of corporate criminals (an oxymoron to liberals), landlords with delusions of dominion over their property, and pesky parents who want to be consulted before their minor children receive birth control or abortion counseling at school. And who — shades of the 1960s — is the "people's lawyer"? According to his inaugural speech and a recent press release, that dubious title belongs to our intrepid new attorney general, Bill Lockyer.

Lockyer's tenure began, fittingly, with a swearing-in ceremony that was a self-parody of political correctness run amok. Eschewing what his press secretary called the "wall of white dudes" typically present at such events, Lockyer's inauguration featured Bob Dornan's nemesis, Representative Loretta Sanchez, as emcee. According to the *San Francisco Recorder,* ancient Indian chants filled the air as "Chief Anthony Pico of the Viejas band of Kumeyaay Indians wafted what he termed sacred smoke into the faces of Lockyer [and] Chief Justice Ronald George," who administered the oath. (Liberals normally regard the public display of religious rituals and subjecting others to second-hand smoke as highly offensive, bordering on criminal. Here, however, the same practices are apparently praiseworthy under the nimble standards of political correctness because the rituals weren't Christian and the tobacco wasn't smoked by "white dudes." It doesn't hurt that the Indian tribes contributed about $1 million to the campaigns of Lockyer and Governor Gray Davis.) The *Recorder* reported that "the inaugural crowd was dominated by longtime Lockyer stalwarts from among labor and the Consumer Attorneys of California," *aka* the trial lawyers. His people.

In his inaugural address, Lockyer vowed that "[a]s of today, the attorney general once again becomes the people's lawyer, re-awakened and re-vitalized and re-dedicated to the economic and civil rights of every Californian." What does this mean, exactly? One of his first actions as AG, on his first day in office, was to move to withdraw a legal brief filed by former Governor Pete Wilson in a case challenging the constitutionality of Proposition 5, the lavishly-funded initiative passed in November 1998 that lifted restrictions on Indian gambling. (The tribes spent $63.2 million backing the measure.) Instead, Lockyer indicated that his office would take no position on the measure's constitutionality. Did I mention that Lockyer and Davis received $1 million in campaign contributions from the sponsors of Proposition 5? So, being the "people's lawyer" apparently means holding an especially soft place in your heart for friendly major campaign donors.

ONE OF Lockyer's next actions was to withdraw an opinion issued in late 1998 by former Attorney General Dan Lungren. The opinion, issued at the request of state Senator Ray Haynes, had concluded that "[a] school district may operate a health clinic that offers pregnancy and abortion counseling and referral services only to those minors whose parents have given consent to such counseling and services." The "people's lawyer" issued a petulant press release blasting Lungren's sensible conclusion: "This opinion, issued by an anti-choice politician in the dead of the night without adequate review, does not reflect thorough legal analysis." Allowing school health clinics to dole out condoms and help teenagers get abortions, without parental consent, is apparently what Lockyer had in mind when he promised in his inaugural address to protect "the free exercise of our rights of choice under the Constitution," only he forgot to mention that this included teenagers and that it meant parents have no rights in the upbringing of their children. (No wonder Ron George and Justice Joyce Kennard, members of the judicial coup that over-

Mark S. Pulliam, California Political Review's *legal issues correspondent, is an attorney in private practice in San Diego.*

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THE FRONT LINE

GOP Grassroots Woes

Duane Dichiara

The strong volunteer-based GOP precinct organizations that were developed throughout California nearly two decades ago have become, with few notable exceptions, shadows of their former selves. In most counties and regions, vital voter registration and Get Out The Vote (GOTV) programs have become expensive stopgap measures that cease to exist the day after the election. Republicans' ability to rely on the grass roots as an equal partner with paid programs has been undermined by a failure to build permanent volunteer organizations in vast areas of California — the very sort of permanent organizations that have become the hallmark of the once less-effective union programs.

This passing of the GOP precinct programs and the explanation for it are a painful topic for a Republican leadership that in many cases has both privately discounted the effectiveness of volunteer programs in general and publicly denied that our grassroots programs are inferior to the new union programs. Each recent cycle Republican leaders have seen the price of paid programs increase dramatically and lose effectiveness, while jump-started precinct programs continue to wane in numbers in comparison to the hordes of paid union "activists" stumping GOP streets and neighborhoods.

Successful county and regional GOP organizations are in place throughout the state. Orange County, guided by recently re-elected Chairman Tom Fuentes, has been a bastion of effective, year-round activism for nearly two decades. Kern and Fresno counties both have maintained active programs that do an effective job on the basic Party tasks required to maintain GOP dominance.

Modesto and Simi Valley Republicans have worked hard in recent years getting back to the basics and rebuilding sound, permanent structures. Each of these programs teaches a valuable lesson in a fundamental rule of grassroots campaigning: keep a permanent communication network with the volunteer base.

But these successful regions are exceptions. Most counties and subregions tend to begin organizing voter registration/GOTV well into each election year, effectively leaving a year or more of "gap" between election programs, during which there is little communication with the increasingly disenchanted volunteer base. Thus, a large percentage of these volunteers are lost through lack of contact or in the turnover of Party/coalition leadership that is chronic in weak Party areas. In addition, intra-party ideological conflict often leads — as it has in San Diego and Ventura counties — to a state of mind in which it is thought: better if nothing happens than that "the other side" control what swiftly becomes in inactive and meaningless collection of titles.

A few general trends are clear. The most effective GOTV programs tend to be those that can mobilize long-term volunteer organizations familiar with the precincts, overlaid by coordinated, paid telephone programs. In each of the successful programs above, *GOP elected officials* have made it a priority to spend time stressing grassroots activism and helping to fund local Party efforts. In each of the successful programs great care and con-

(Please turn to page 28)

Duane Dichiara, a land use policy advisor for San Diego County Supervisor Bill Horn, is political director of the Adam Smith Institute.

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threw California's parental consent statute, were proud to stand with Lockyer at his inauguration and have "sacred smoke" blown in their faces.)

On January 28, Lockyer issued his most histrionic press release yet, announcing that he was taking a position in an appeal to which the state of California is not even a party. The case, *Thomas v. Anchorage Equal Rights Commission,* was decided by the U.S. Court of Appeals for the Ninth Circuit on January 14, 1999, holding that a Christian landlord in Alaska could not be compelled to rent to unmarried co-habitants in violation of his religious beliefs, notwithstanding Alaska's law prohibiting discrimination in housing based on marital status. (By a 4-3 vote, the California Supreme Court reached a contrary result in a 1996 decision, *Smith v. Fair Employment and Housing Commission.)* Alaska had already requested a re-hearing of the case before the entire Ninth Circuit; Lockyer was announcing that he had filed a me-too "friend of the court" brief supporting Alaska's position. Interloping in other states' lawsuits is a great opportunity for publicity hounds such as Lockyer to engage in meaningless grandstanding.

His overwrought press release trivialized the religious freedom of property owners: "The court's decision threatens to roll back California's civil rights laws to 19th century levels. In effect, if this ruling stands, it tells landlords, and potentially other commercial enterprises, that religious discrimination *[sic]* is acceptable in this state. The people of California won't tolerate such discrimination, and, as the people's lawyer, I strongly urge the Court to reconsider this flawed decision." Of course, Lockyer's rhetoric is entirely disingenuous. Neither logic nor the First Amendment compel the conclusion that the statutory rights of unmarried tenants to be free from discrimination should trump the constitutional right of private sector property owners who believe that fornication is sinful to refrain from facilitating a violation of their religious beliefs. In Bill Lockyer's world, not all civil rights are equal: Christian religious beliefs are not entitled to respect, unlike the pagan cere-

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

By WILLIAM E. SARACINO

Meet two pre-eminent anti-gun politicians; U.S. Sen. Dianne Feinstein and State Sen. Don Parata. Both hate guns. Both have unblemished records of wanting to disarm you and your family using state power.

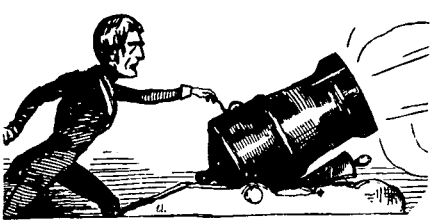
Both have permits to carry concealed handguns on their person.

"CCW"s — Carry Concealed Weapon permits — are *very* tough to come by in most locales. You must state a very specific reason you need the permit, and usually a general "fear for your life" doesn't cut the mustard. Even after you get a permit, it must be renewed every year, and if the original reason for having the permit has changed the permit is almost never renewed.

Feinstein became San Francisco mayor after George Moscone died. She said at the time she received death threats. That was 1979. Don Parata explained he received unspecified threats from "right wing nuts" when he worked for Rep. Howard Berman — at least 15 years ago.

Unless Feinstein or Parata have received continued threats, or have other "good cause" to have their permits, they should have surrendered them years ago. Both senators' offices are mum on the topic. Both are engaging in rank hypocrasy.

Gun Owners of California hereby proposes a new system for obtaining CCW permits — the Feinstein-Parata Anti-Hypocrisy Act of 1999. Let's look at their CCW renewals for the last five years. Any citizen who falls under the same circumstances Feinstein/Parata have used to justify their most recent CCW renewals would automatically qualify to also receive a CCW.



Seems fair, doesn't it? Don't hold your breath. Feinstein and Parata have their guns, not to mention legislatively-related body guards. You? You're family? Oh come now, don't you realize that to the liberal elites you just don't count. The media has known about these two hypocrites for years. I'm still waiting for the first expose by a crusading reporter. But at least now next time you meet a heavy-breathing anti-gun type, you have some new ammunition to stop him in his tracks. CPR

William E. Saracino is executive director of Gunowners of California.

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LEGISLATIVE FILE

Under intense political pressure from the vast majority of Californians who support the Boy Scouts, the California Supreme Court last year forced the Democrat left-wing to retreat a little in its assault on First Amendment religious and associational freedom rights. So .... it's now on to the Second Amendment for the left which, thanks to Lungren's bumbling, apologizing-for-being-conservative campaign, took commanding control of the state Legislature in November.

Democrats are carpet-bombing in an effort to whittle away at your and my right (but not theirs — see: "What You Haven't Been Told About Gun Control," page 6 of this issue) to defend ourselves or to decide for ourselves whether or not we want to own guns. The content of these bills follows no rational pattern in terms of crime control or safety. The pattern, rather, is to probe for any weakness in Second Amendment support and, when any is found, to shove on through — the way the Viet Cong, for instance, used to operate, as Tom Hayden could tell you.

The Honorable Hayden's SB 130 would require gun locks be sold with all firearms. Now, guns can be kept safe merely by unloading them; this bill's purpose is more psychological: to habituate Californians to having all sorts of arbitrary rules applied in violation of a basic right so we get used to it.

And, in fact, the stupider the rules are the better they serve to train us to accept them without question, the way we've been trained to accept the Postal Service and the IRS, quietly ignoring the patent absurdities both impose upon us day by day.

In the same vein, Sen. Steve Peace's SB 29 teaches that there is something inherently shady, bordering on criminal, in buying a gun. It requires firearms sellers to provide a "delivery record" from the sale of handguns to the Department of Justice (we *must* be kept under watch, you see) when the firearm is delivered after the 10-day waiting period.

Sen. Don Perata, who hypocritically holds one of California's few concealed carry permits, wants to "outlaw" (SB 23) magazines that hold more than 10 rounds. Eleven rounds bad; ten rounds good.

Nonsense, of course, but it sounds less obviously so when marketed as a crusade against "assault weapons." The point again is to affirm Perata's "right" to limit, squeeze, violate *our* rights as law-abiding Americans, with or without any rational basis. Next year, maybe it will be decided that five-round magazines are sufficient for us. Then two, then none. Maybe they'll let us keep flintlocks, but then again, maybe they won't. The point is to affirm that the choice is theirs, not ours.

Sen. Richard Polanco (SB 15) would make it a crime to make or sell or give anyone certain handguns; Assemblyman Jack Scott's AB 32 would certify the "eligibility" of you or me to work for a gun dealer, also placing various restrictions on the dealers. Assemblyman Wally Knox (AB 202) would limit purchases of concealable firearms to only one per month. Now this, plainly, is a problem crying out for attention: all those wild law-abiding middle-class folks stocking up on small handguns. If they want to buy 12 of them, we're all clearly better off making them take a year to do it, and settle for multiple shotguns and rifles in the meantime. The stupider, the better; the IRS would understand. **CPR**

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monies of Native Americans. What really upset critics of the Court's ruling, such as the Lambda Legal Defense and Education Fund, is that the trial judge, in its words, "decorated his decision with footnotes cataloging the landlord's biblical references." To Lambda, a proponent of special rights for homosexuals, the *Thomas* case "illustrates how the right wing is now taking the offensive in these matters." The U.S. Supreme Court will ultimately have to decide whether the decision in *Thomas v. Anchorage Equal Rights Commission* is correct, a process in which the state of California plays little or no role, but expect plenty of demagoguery and showboating from Bill Lockyer anyway.

As 1998, and the Wilson administration, wound to an end, liberal journalists heaped praise on Ron George and the "centrist" direction in which he has taken the California Supreme Court. In the liberal lexicon, "centrist" or "moderate" is code for "liberal," since liberals do not acknowledge that they are liberals. The *L.A. Daily Journal* approvingly noted in its year-end wrap up that "[i]t is now clear that the George Court ... is definitely more moderate [read "liberal"] than its immediate predecessor," *i.e.,* the Court under Chief Justice Malcolm Lucas. The *San Francisco Recorder* editorialized that Wilson — despite what it considered a lamentable move to the right on certain issues — "remained true to his moderate principles" in the area of judicial appointments. In a mixture of derision, condescension, and liberal flattery, *Recorder* editor-in-chief Scott Graham summed up Wilson's record in these terms: "While his campaigns have the feel of Rush Limbaugh or Jesse Helms, his judges still feel more like Dwight Eisenhower or Nelson Rockefeller .... Not for nothing was [Ron George's] campaign supported by Democrats like [Dianne] Feinstein. Kathryn Mickle Werdegar and Ming Chin have, like George, steered a moderate course .... Wilson's picks ... by and large have been good for the bench. He deserves credit where credit is due." This type of praise from liberals is the surest sign that Wilson blew it on judicial appointments, at least at the Supreme Court. Only Wilson-appointed Justice Janice Brown, whom the press continues to marginalize, is true to such "conservative" principles as the rule of law. (Marvin Baxter, the only other conservative on the Court, was appointed by George Deukmejian.)

The most recent example of what it takes to be hailed as a "moderate" or "centrist" Court came in *Santa Monica Beach, Ltd. v. Superior Court,* 19 Cal.4th 952, decided January 4, 1999. In a replay of the alignment displayed in last year's decision in *Landgate, Inc. v. California Coastal Commission,* 17 Cal.4th 1006 (1998) (see my "Chief Justice or Chief Scofflaw?", *CPR,* July/August 1998), the Court split 4-3 in a case involving property rights, with the majority opinion written by arch-liberal Justice Stanley Mosk, the member most hostile to economic liberties. Mosk was joined by Ron George, Kathryn Werdegar, and Joyce Kennard. Marvin Baxter, Janice Brown, and Ming Chin dissented. As in *Landgate,* George cast the deciding vote, against the property owner. The majority overturned a lower court decision and rejected an apartment owner's legal challenge to Santa Monica's rent control law. The Court of Appeal had agreed with the apartment owner that the law was an unconstitutional "taking" because it abridged property rights while failing its stated objective of providing affordable housing for senior citizens, young families, and other low income renters. In fact, rent control has "gentrified" the Santa Monica rental market, resulting in a boom of high income renters. In other words, rent control — a policy failure everywhere it has been tried — has turned out to be a massive wealth transfer from middle class apartment owners to BMW-driving yuppy tenants.

To which Mosk's majority opinion in *Santa Monica Beach* responded, "So what?" Brushing aside the apartment owner's contention that the law's failure to achieve its goal rendered it vulnerable to a heightened standard of review called for by U.S. Supreme Court precedents, which require that a law abridging property rights "substantially advance" a legitimate government purpose, Mosk said, in essence, that even yuppies are entitled to their share of the spoils. The majority held that the more rigorous standard set forth in *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994) does not apply to rent control legislation.

The dissenters sharply disagreed, with Baxter and Brown concluding that Santa Monica's rent control scheme was in fact an unconstitutional taking of the apartment owner's property. The rent control law confiscated the property by denying him a fair market return, while at the same time failing to advance the stated governmental purpose of providing affordable housing for low income tenants. In a meticulous survey of prior decisions, the dissenters denounced Mosk's majority opinion as "misguided," "erroneous," "remarkable," abdicat[ing] the judicial role," "vacuous," and "display [ing] ... judicial sleight of hand." The majority reasoned that courts must defer to the Legislature regarding the wisdom or efficacy of challenged laws, lest they assume an "activist" role, but the dissenters pointed out that the U.S. Supreme Court's "takings" caselaw compels a de-

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termination of whether a law affecting property rights has "substantially advanced" legitimate state interests. The majority in *Santa Monica Beach* denied the apartment owner his opportunity to show at trial that the rent control law didn't satisfy this standard.

The U.S. Supreme Court will have the final word in this case, as in *Thomas v. Anchorage Equal Rights Commission,* because rights protected by the U.S. Constitution are at stake. As property rights expert Ronald Zumbrun points out, *Santa Monica Beach* "is the latest in a series of anti-private rights decisions by California's High Court, which consistently has failed to follow strict guidelines for evaluating takings claims set down by the U.S. Supreme Court over the past 12 years." The California Supreme Court cannot usurp the supremacy of federal law by resorting to "independent state grounds" under the California Constitution, as it did in the parental consent case. The lengthy and eloquent dissents of Baxter, Chin, and Brown increase the likelihood that the U.S. Supreme Court will grant review. If so, you can bet that we'll hear from the "people's lawyer," who will undoubtedly support Mosk's ruling. After all, tenants living in rent controlled apartments in Santa Monica are just his kind of people. Apartment owners, parents, Christians, and other politically incorrect Californians are not. CPP.

THE MIDNIGHT ECONOMIST

Saving us from *Saving Private Ryan*

A harrowing pornography of carnage and gore, burdened with inaccuracies and portrayed by its authors as an anti-war message movie — no wonder Siskel and Ebert loved it.

WILLIAM R. ALLEN

I AM NOT an official movie critic. I could not hope to match the wit and wisdom, the sophistication and erudition of Gene Siskel and Roger Ebert. But that does not mean I am not critical of movies and of the geniuses who make them.

The Motion Picture Establishment has much difficulty in finding good stories to tell and in telling them well. This includes war stories. One can feel unclean in watching precious, pampered, pretty boys of Hollywood play soldier. Feelings of wariness and misgiving can be engendered even by such talkie icons as Steven Spielberg and Tom Hanks and their *Saving Private Ryan.*

Ryan is a striking product which has strained the vocabularies of reviewers. The picture tells us of "patriotism, shock and horrific sacrifice." It is "a bravura visual achievement" with "the terrifying, furious immediacy of its battles," "an unfashionably wrenching spectacle." Audiences were not attracted by promises of subtle insightfulness; it was not interpretation of vexing philosophic conundrums they sought, even if Siskel and Ebert profess to be intrigued by undistinguished dialogue about how men can be induced to kill other men. Customers were lured to the theater with promises of seeing arms and heads blown off and entrails spilled; presumably they were not disappointed. And, once there, they could watch a German bayonet pressed slowly into the chest of an American.

Why this harrowing pornography of mayhem, savagery, carnage, shock, and gore as setting to tell a quixotic story poorly? Not commercialism, Mr. Spielberg says, for he supposed that the ghastly orgy would not "be tolerable to audiences." (In supposedly supportive analysis, Mr. Hanks observes: "This film is not like a big blanket that is palpable to everybody.") He assures us of nobler motives — and of great surprise that it has brought in so much money. His movie was to be a (largely unwatched) memorial to veterans of his father's generation by being the very first to show combat as it is. So now, after 6,000 years of recorded bloody human history, finally an honest movie establishes the fact that war is hell.

But memorials and history lessons are best based scrupulously on accurate accounts. An entertainer can reasonably assume some marginal fictional license, but it is awkward to claim while doing so high seriousness of pur-

William R. Allen,, now guarding the gate from the vantage point of the UCLA Department of Economics, won World War II with very little help from Hollywood.

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pose and refined respect for depicting historical truth.

We find, along with various other peculiarities, a captain (with conspicuous insignia of rank) leading a small patrol to seek a private whose paratrooper unit, in historical accuracy, had been dropped in an area far away in a different sector; the members of the patrol bunched together and loudly conversing like Boy Scouts hiking in open ground to a picnic behind enemy lines; and the intrepid leader taking the initiative on two occasions to flaunt orders by the Chief of Staff (!) not to jeopardize the mission by engaging the enemy.

In a grossly discordant grace note, the aging rescued Ryan asks at the end of the picture if he has been "a good man" in the half century after the heroics. We may hope so, for, from his own account in a heartwarming eve-of-battle reminiscence, he and his brothers had been repulsive and unrepentant hellions.

It may be unrealistic to suppose that any movie will be highly significant either as sophisticated memorial or profound history. Even feelings of patriotism engendered in the audience comfortably nibbling on popcorn and Milk Duds will be shallow. As commentator John Gregory Dunne has put it: "... bravery in combat has been extolled as the *sine qua non* of patriotism. It is not. Patriotism is the acquired devotion to an abstraction — the nation — while bravery under fire is personal and instinctive."

And what are the ruminations of Mr. Hanks on why *Ryan* was made and what it means? Well, the post-1945 world is different and less clear-cut. "... all of us could project ourselves very easily back into that sort of [World War II] mind-set .... There is something comforting and easy and secure about knowing who the bad guys are and who they aren't. We simply don't have this any more." This combination of words suggests that he is not sure that the United States should have been supported in Korea, Vietnam, and the Gulf. Now, many of us have raised questions as to *whether* we should have been on all those battlefields, *how* we happened to get there, and, after arriving, *how* the battle should have been conducted. But only a Hollywoodian philosopher could doubt that North Korea, the Viet Cong, China, and Saddam Hussein were genuine enemies, powerful forces of evil who wished us great ill.

A FINAL APPROACH to the significance of the movie is provided by historian Stephen Ambrose. Books compiled by Mr. Ambrose supplied much of the raw material for *Ryan,* and he participated in a reception prior to the movie premier. "I think it's a good thing," he told a reporter, "that the American people have a look at what war is. I think they'd be a little more hesitant to send the kids off." So now *Ryan* is an educational anti-war picture. Ryan has its setting in World War II, the subject of much of Mr. Ambrose' work. If we had foreseen the full horrors of Guadalcanal and Schweinfurt and Normandy and the Bulge and Iwo Jima, would we have sat out World War II? Would we have been wise to do so?

A parallel has been suggested between *Ryan* and the book (1928) and the movie (1930), *All Quiet on the Western Front.* This raises two points.

FIRST, WHAT is the *likely influence* of such books and movies? *All Quiet* did not handicap Adolf Hitler. Indeed, to the extent that the famous novel and the acclaimed movie had influence, they played into Mr. Hitler's hands — as did the "ever-shameful" (Winston Churchill) Oxford Union pledge of 1933, "That this House refuses in any circumstances to fight for King and Country." (Mr. Churchill later noted: "Little did the foolish boys who passed the resolution dream that they were destined quite soon to conquer or fall gloriously in the ensuing war, and prove themselves the finest generation ever bred in Britain.") Evidently, Mr. Hitler was convinced, with reason, that the cowardly, decadent democracies would not stand up to him, or, if they did, they would do so only ineffectually. Mr. Churchill was in despair through the 1930s, for fear that this contemptuous assessment was correct.

Second, do we *want* "the kids" and their parents to be utterly frozen in fear? I stand in little need of persuasion of the gruesome and devastating waste of war. Economists do not like waste — but they understand that achieving goals entails the bearing of costs and the paying of prices. Only pacifists refuse to fight at any time under any circumstances. We wish that wise statesmen appropriately avoid war. But if a Neville Chamberlain (who was decent but commonly not very wise) fails, we had better hope that a Winston Churchill (who was decent and generally very wise) is available. If, through our bumbling or the belligerence of others, the trumpet sounds, then we must call upon our boys and young men to do their duty well, as the boys and young men of preceding generations have done.

I doubt that that expectation can be significantly nourished by the likes of *Saving Private Ryan.* Mr. Spielberg and Mr. Hanks bear little resemblance to Mr. Churchill. CPR

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More moderate than thee

Editorialists urge 'moderation'; special interests await pay-offs; liberals yank left; and conservatives wait to pounce — Gray Davis should deliver us an interesting several years.

TIM W. FERGUSON

CALIFORNIA'S FREE-SPIRITED capitol press corps has reached another near-unanimous verdict, that Gray Davis is one moderate fellow. The *Los Angeles Times* editorialized that he'd better be, lest those Demo partisans who now rule the Legislature (most of them from the LA area endorsed by the yin-yang *Times)* go on a spending spree. Journalistic den mother Sherry Bebitch Jeffe assured us on the paper's op-ed pages that the Dems are too politically smart to "throw themselves off the deep end." Besides, as the *San Francisco Examiner* and others complained, "Davis will be hamstrung" by the 25 percent reduction in the vehicle tax that Pete Wilson (really, Tom McClintock) got enacted — "a tax cut that will cost the state $1 billion this year." More, if we're lucky!

So is the guv as Gray as they say? Well, with every scribe but Dan Walters giving him a honeymoon, he was whatever you wanted him to be. He let a reformed murderer fry in the Big House, so we can erase those Dan Lungren ads about Rose Bird from our minds. He did a dance of wills with the teacher union on accountability. Same with the state employees clamoring for a big raise. So there were early reasons to hold right-wing fire.

Of course, he does have interest groups to attend to. The *LA Times* noted that Democrats were 16 years behind in their judicial appointments. (Davis won't name "ideological crusaders," an adviser said.) Latinas in the Legislature want more public spending on their sisters' health care. And the gays want same-sex benefits and marriage rites. Illegal immigrants will get the prenatal care that the nasty Wilson took away. Welfare recipients got a small "raise." Organized labor will turn back the clock on mandatory overtime pay. The trial lawyers want freedom from caps on damage awards. The public-works lobby demands $16 billion in transit bonds. The enviros got their favorite, Mary Nichols, in as Resources secretary, and Jose Medina, a San Francisco supervisor with no background in transportation, was named to head Caltrans as a favor to Willie Brown. (Credit Scott Winokur of the hometown *Examiner* with a nice column explaining the machinations of that deal.)

The savvy left, which knows the real score, is going to try to force Davis into something meaningful: attacking Proposition 13 for a honey pot of revenue. The *LA Weekly's* Harold Meyerson was quick off the ball on that one. It's going to be an interesting several years. The press room may have trouble keeping its story straight.

* * *

On the silly side of the Mall, there's a horse race for vacuous self promotion between reigning champion Kathleen Connell, the re-elected state controller, and Phil Angelides, the new treasurer. Angelides-elect wasted no time in burning reporters' fax machines with a self-important pronouncement on his 19-person "transition team"; an advisory of the swearing in of "the first Sacramento native elected to statewide office since Hiram Johnson"; a letter to Gray Davis advising him on how to revise the state budget, and a scroll of "second phase" appointees of such merit that they included, as the new executive director of the School Finance Authority, the Southern California head of the National Abortion and Reproductive Rights Action League. (She's obviously qualified to solve the classroom crowding problem.) This tinhorn pain in the tush may soon wear out his welcome even among his fellow earnest liberals in the media.

* * *

Los Angeles experienced a serious dust storm for several weeks as publications local and national called into question the work of Marxist pseudo-historian Mike Davis. He's been the toast of the literary establishment for his books *City of Quartz* and *Ecology of Fear,* which paint LA not as a bustling center of multi-ethnic entrepreneurism but as a cauldron of racial and class warfare and a particularly egregious rapist of

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Tim W. Ferguson is California Political Review's *press critic.*

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Mother Nature. Seems the twin best sellers contain many falsehoods, minor and otherwise. When a couple of contrarian free weeklies in town picked up on the work of a gadfly who found Davis's factoids and footnotes wanting, this provided kindling for a real intellectual firefight in LaLa Land. Some of the outsider stuff was unsparing (London's *Economist:* "City of frauds.") The *LA Times,* whose left-leaning social-studies staff had provided a platform for Davis' dystopian vision over the years, was forced into addressing the controversy with a news feature that was a classic for backing into a story (beginning with a picture of Davis bemused by a swirling controversy that readers dependent on the *Times* wouldn't even know existed). The paper followed this with regular columnist Robert "Green Jeans" Jones decrying the "truth squad" presuming to police Mike Davis. All good fun!

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The political press hadn't paid GOP Congressman Jim Rogan enough attention until he became an impeachment "manager." Now, look out. His electoral death warrant in the marginal Glendale district north of downtown LA has been signed, sealed, and delivered. The aforementioned Meyerson of the *LA Weekly* told his troops that ex-judge Rogan had deceptively positioned himself as a thoughtful pragmatist but in fact had been a Pat Nolan clone all along. Albert Hunt of the *Wall Street Journal,* who's usually willing to cut his good sources of whatever persuasion some slack, was still labeling him "sensibly moderate conservative" and one of the few Clinton prosecutors not due for a dunce cap. But he, too saw trouble in Rogan's future.

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In case you were wondering where *Sacramento Bee* pundit John Jacobs stood on the political divide in Washington (you were wondering, weren't you?), take this concluding paragraph of his observations on the State of the Union speech and the GOP response: "One was the party of optimism and the future; the other, the party of revenge and limitation. No wonder Clinton's poll ratings are so high. This isn't rocket science." And thank goodness for that.

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You can go either way on George W. Bush's "compassionate conservatism," but it was no favor to have Robert Scheer rising to his defense in Column Left of the *LA Times* op-ed. Troglodytes like Dan Quayle were picking on Bush Junior, and that was too much for battling Bob. Not a kiss of death, perhaps, and maybe Scheer's talk-radio buddy Arianna Huffington — the compassion queen — is working her notorious wiles on him, but with friends like these, Bush is going to have a lot of party activists to assuage.

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The *Orange County Register's* news department continued its efforts to enlighten benighted inhabitants of the curious kingdom. It dispatched a swat team of reporters to sing the praises of a new federal "empowerment zone" (read: eligible for special subsidies) in Santa Ana ("City awaits promise") arranged by Demo sweetheart Loretta Sanchez. It promoted the "campus cool" of low-rise office parks (which compete with unsightly towers but have the unfortunate effect — unmentioned by the *Reg* — of contributing to the hated suburban sprawl). And its periodic Sunday sob story on p. 1 focused on a family struggling to get by on the high cost of housing behind the Orange Curtain — a family with, it appeared, at least five young children. Like every story of this familiar type, it not once raised the question of why this struggling household continues to add to its numbers. How callous a consideration — just the kind of thing they'd say in Orange County!

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The *American Journalism Review* devoted an astounding 18 pages to dissecting the pitched battle between two newspapers rarely read east of the Sierras: the *San Jose Mercury News* and the *San Francisco Chronicle.* Only hard core readers will make it to the end, so let this column save you the No-Doz: the winner is ... yet to be revealed! One element that apparently figures not at all is the political tone of the publications. This is curious when you look at what distinguishes media products elsewhere. But then, a region that worships capital gains and Barbara Boxer at the same time is obviously inattentive to ideology.

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Let's not forget the bouquets. The *LA Times's* ongoing school-reform series reported that the federal Title I program for impoverished children has benefitted, most of all, the 50,000 "parents or activists from surrounding neighborhoods" who've been hired to be what are charitably called classroom aides. The kids themselves seem to get little out of it. The *Wall Street Journal's* op-ed page published a Brookings Institution fellow's finding that the federal payroll represents only a fourth of the true employment that Washington requires. The rest are positions created by federal contracts, state and local workers carrying out federal mandates, and employees of the government's grant recipients. And finally, praise again is due the *New Times Los Angeles* weekly, for a cover story on the state's MTBE "clean gasoline" fiasco that has polluted the water basins of much of California. Now a push is under way nationally for mandates on the oil industry to do a wider round of cleansing. See how often the enthusiastic environmental writers make reference to what happened with MTBE. CPR

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WASHINGTON LETTER

by Leon E. McKinney

California Congressional Delegation Report

Cox urges curbs on Clinton deals with China

White House vows bitter fight to protect presidential practice of allowing militarily useful technology transfers that benefit key Democrat donors.

Last issue, we reviewed the December 30 release by Rep **Chris Cox** (R-Newport Beach) of the classified report by a Cox-headed select House panel investigating another example of the **Clinton administration's** playing footsie with the law. Cox told a press conference that two U.S. satellite companies with close ties to the president and the **Democratic National Committee** (DNC) — **Hughes Electronics** and **Loral Space & Communications** — had engaged in activities that damaged U.S. national security. Specifically, Hughes and Loral apparently provided technology that helped improve **Communist China's** ballistic missiles to such a degree that China's missiles can now reach **Chicago.**

Loral chairman **Bernard Schwartz'** personal contributions of more than $1 million during the 1996 election cycle made him the Democrats' biggest individual donor; during that same period Clinton changed long-standing export-control policies designed to safeguard U.S. military technology, to the benefit of Loral.

The Cox panel's 700-page, five-volume classified report — unanimously approved by the panel's five Republicans and four Democrats — made 38 recommendations to tighten controls over exports to China. Now the Clinton Empire has struck back, sending its response to congressional leaders on February 2. The 32-page document promised a bitter fight on the Cox panel's most important proposals. One of those proposals would have U.S. officials demand no-prior notice, on-site inspections of Chinese facilities that import high-speed computers from the **United States;** should the Chinese refuse, then the allowable performance levels of computers sent to China would be reduced.

This proposal was prompted by repeated Chinese violations of terms and conditions of export licenses. One particularly shady stunt by the Chinese stood out. **McDonnell Douglas,** as part of its joint effort with **China Aerospace** (owned by the Chinese government) to produce commercial airliners, had exported high-speed computers and computer-controlled machine tooling to China. Despite the export license granted by the U.S. **State** and **Defense Departments** requiring that the equipment remain at a specific commercial aircraft manufacturing facility, China secretly transferred the equipment to a nearby military aircraft manufacturing facility sometime during 1994.

Clinton is most upset by Cox's proposal to make it easier for agencies opposing high-tech exports deals on national security grounds — *i.e.,* the State or Defense Departments — to stop them. Currently, if State or Defense oppose an export, they have to take their concerns up through the government's ranks and ultimately to Clinton to obtain a delay. No prizes for guessing that Clinton has routinely issued waiv-

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California Political Review *Contributing Editor Leon E. McKinney is an engineering consultant in St. Louis, Missouri.*

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ers overruling State and Defense objections. Cox would allow mid-level State or Defense officials to stop export deals.

The White House complained that Cox's proposals would result in the sort of "unjustified delays" that we had under **Reagan** and Bush in the approval and licensing to export dual-use (commercial and military) technology such as high-speed computers. A Clinton official said, "It looks like the Cox people want a return to the old way of doing business." Well, yes. Back then, administrations cared about national security. But last year, as part of the FY 1999 National Defense Authorization, Congress transferred authority for licensing satellite exports from the hip-hop, anything-goes **Commerce Department** of **Ron Brown** and **John Huang** to the State Department. The transfer will take place officially on March 15. While State Department officials pledge that export applications that don't run into national security roadblocks will be approved within 90 days, satellite industry executives point to the past, when it sometimes took a year for State to approve satellite deals with China.

So Clinton is going to do what he's done throughout his White House years: circumvent federal law by issuing an Executive Order. This particular EO will change State Department export licensing into something more like Commerce's, and, just to be sure that Bernie Schwartz doesn't have any problems shipping satellites, the EO will also give Commerce the right to appeal State Department decisions. The EO will effectively nullify the intent of the export control provisions in the National Defense Authorization that Clinton signed into law, as was pointed out in a letter sent to Clinton by the GOP chairmen of six defense-related congressional committees.

When China isn't acquiring U.S. technology through espionage, assisted by greedy American businessmen and a president who couldn't care less about America's security, it's repeatedly issuing heavy-handed threats against the United States, warning us not to do anything that might be interpreted by China as interference with their efforts to intimidate **Taiwan, Japan,** and **South Korea** militarily. During Taiwan's 1996 elections, when China lobbed missiles into the oceans around Taiwan, a Chinese Foreign Ministry official told a U.S. military attaché that the U.S. wouldn't respond to a Chinese invasion of Taiwan because "you care more about **Los Angeles** than (Taiwan capital) **Taipei."** More recently, China warned the U.S. not to work with Taiwan, South Korea, or Japan on developing missile defense systems for those countries.

Meanwhile, back in **California,** Republicans should be on notice to help Rep. **Jim Rogan** (R-Glendale) defend his 27th District seat next year against the expected onslaught by a president seeking revenge. While Clinton has been traipsing around the country since August on what **Jay Leno** called the "**World Apology Tour '98",** biting his lip and shamelessly urging gatherings of church leaders to pray for him, he apparently hasn't meant a word of his oft-repeated expressions of contrition and repentance.

February 12's **New York Times** reported White House "advisers" said Clinton was planning an all-out campaign to recapture the House focusing on booting out the 13 House impeachment prosecutors. Later, other Clinton "advisers" told the **Washington Post** Clinton was furious that his scheme had leaked. Clinton Press Secretary **Joe Lockhart** didn't deny the report but said, "I can't think of a worse, more dumb strategy than going after people based on whether they were a House manager or not .... the vast majority are in safe seats or unopposed seats." Jim Rogan, however, is not. A mid-January Democrat poll showed 44 percent of his constituents less likely to vote for him because of his impeachment role. And even in a normal campaign, Rogan would stand out as a ripe target. Utah Rep. **Christopher B. Cannon,** another House prosecutor, called Clinton's revenge plan "the height of arrogance." Utah Sen. Orrin Hatch said Clinton should try to leave "an eensy-weensy, itsy-bitsy better legacy than he has so far." CPR

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Political Cod Liver Oil

**Said to cure everything,
never shown to cure anything,
abandoning our values
still makes a nauseating concoction.**

by Barbara Alby

Dear RNC Member:

As a conservative Republican, one aspect of the most recent elections has given me an appreciation for an ordeal that our parents and grandparents were forced to endure as children. During the first half of this century most parents subscribed to a universal cure-all for every childhood illness — cod liver oil. I'm told it was pretty revolting stuff. Children were forced to swallow it for everything from indigestion to winter flu. It tasted terrible and in some cases made things worse. Cod liver oil was never shown to cure anything — but conventional wisdom said it cured everything.

In the world of electoral politics we have something similar today. The solution to every lost election, every negative poll, every policy defeat, it seems, is to abandon our values. Republicans are told we must moderate, capitulate and compromise. It's an unnecessary and nauseating concoction, amounting to nothing more than modern-day political cod liver oil.

No one will argue with the proposition that the high point for the Republican Party since the days of Lincoln was the presidency of Ronald Reagan. Under Reagan it seemed that everything we did as a Party worked. We were respected around the world as a

California Republican National Committeewoman Barbara Alby represented the state's fifth Assembly District from 1993 to 1998. She sent this "letter" to all RNC members in January, shortly before the RNC's annual convention.

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great nation. The national degradation and decay of the 1960s and '70s seemed like ancient history. We were proud again to be Americans.

The path from that great time to where we are now was paved with moments of triumph and tragedy. Americans thought they were voting for another Ronald Reagan when George Bush made a solemn commitment not to raise taxes. In the name of "compromise," Bush sacrificed his presidency over a budget deal; the beneficiaries of that compromise then beat him over the head with it.

HAVEN'T WE learned our lesson? Why do Republicans continue to stray down the policy road into liberal territory? Is it to apologize for being us? We'll never be better liberals than they are — even if some of us want to be — whether it's protecting social security, the economic foundations of our free society, or, yes, even the sanctity of human life. We must learn this very important lesson; emulate the Ronald Reagans of our Party, not the Bill Clintons. Why would anyone vote for a Republican who's a little bit liberal, when they can choose the real thing? Better yet, why would our base even bother to go to the polls when Republican leaders keep moving away from the issues they care about? Or worse yet, when they try to win the liberal opponents base? That is the story of California in 1998. Is it any wonder Matt Fong lost to Barbara Boxer?

Unfortunately we are being force-fed spoonful after spoonful of surrender medicine since the election. Don't swallow it. There was nothing wrong with our message — where we had one. Our problem in the last election was that our voters stayed home. They had no reason to vote. On November third, a felon was sitting in the oval office and the message from the Republican Congress was that we were thinking it over. A gruesome procedure where viable human babies are sadistically exterminated was discussed in the Republican-controlled Congress and efforts to ban it fell short for want of Republican votes. Of course our voters stayed home. They had nothing to vote for. Contrast this with 1994 when we had a unified, clear, and concise message — in writing! We stood for something and we won.

If we want to restore the public's faith in the Republican Party, the choice is clear. We must articulate our views in plain language, leaving out the qualifiers. Americans are tired of verbal acrobatics. It's time to stand up for what we believe. Notice how fast Bill Clinton stole our policies. No, friends, it's not our values. The biggest threat to the future is us. We must articulate a message of conservative values compassionately. Quit talking about bottom lines and start talking from the heart. Tell our stories about what Republican policies have done for people. Make our politics personal. I was a welfare mother when a Republican governor changed my life. His name was Ronald Reagan and he cut my benefits. Those policies moved me from the poorhouse to the statehouse, where years later, I was elected to the California Legislature to represent more than 400,000 people, many of whom where in the same situation that I had been in. Liberals would have given me a bigger handout and kept me in my place. There are many stories like that among us. Let's tell them! Be proud to be a Republican, but make our politics and policies personal.

Here's my prescription for what ails us. Keep the faith but learn to market it. Put a better face on our ideas. Go after the gender gap. It's not about abortion. It's about the perception of an insensitive, male-dominated Party. Move our women out, not just behind the scenes but also behind the microphones and in front of the camera. I'm not just talking about the women of Congress but women of the RNC. This is especially important for the policy debates on education and HMO reform. The RNC should develop a policy agenda that can assist the Congress. An agenda structured by our members — not the congressional leadership telling us what our cause is. Too often we become the apologists for their blunders. We owe it to the people we represent to stand with and for them at the table.

GET SERIOUS about candidate recruitment. Build a bench. It is time to quit relying on brain dead consultants and pollsters. I sat through meetings for a year, hearing how it was virtually impossible *not* to pick up 28 seats. Hello? And above all, remember, while you are attempting to attract new voters, do not forget the supporters we already have and cannot live without. Remember the family values and tax fighting freedom lovers who make America great.

Listen to the Sunday morning pundits if you must, but don't swallow their cod liver oil. Your right; they're not.

Most Sincerely,
Barbara Alby, California

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WISE AS SERPENTS SIMPLE AS DOVES

HOW HOME SCHOOLERS DEFEATED DAYTIME CURFEW IN MONROVIA

BY JAMES BEMIS

Necessity, the Tyrant's plea, . . .
— John Milton

JULY 1996. In the midst of a hectic swing through California during his reelection campaign, an ebullient President Clinton appeared at a packed Monrovia High School auditorium to praise the City of Monrovia for being the first city in California to pass a daytime curfew law for teenagers, singling it out as a "sterling example" of what his administration was trying to achieve in tightening the reins on kids. He encouraged the community in its fight against juvenile crime.

"You have proved that it can been done, and it will get results," said the president, "Please, please keep it up."

(October 1995, just before noon in Monrovia. According to court documents, 15-year-old Melinda Isenberg and a classmate from Calvary Road Baptist Academy were walking to a nearby store. Laughing and talking, one of the girls noticed a car with two adults slowly following them. They walked faster. The car sped up, keeping pace with the teenagers.

Fearing for their safety, Melinda and her friend began to run, but the car continued its pursuit. Suddenly, the vehicle pulled in front of them, forcing the girls into an abrupt stop. The adults got out of the car, asking the teenagers to explain why they weren't in school. After displaying permission slips, the terrified girls were allowed to go on their way, but with an ominous warning — "next time," the grownups said, they would need "more identification."

The car was unmarked and the adults never identified themselves.)

Since implementing their daytime curfew – also known as their anti-truancy program — in 1994, the City of Monrovia, the Monrovia police department, and Monrovia school district repeatedly touted the law's success to the media and interested civic organizations. Truancies reduced by 44 percent! Student dropouts declined by 54 percent! Daytime crime down by 49 percent! Interestingly, no one in the press ever questioned the figures given to them by authorities.

(February 1997. Jess Harrahill, 15, was walking home from adjunct classes at the local high school. Harrahill, who is schooled at home, often took supplemental classes at nearby public schools. Suddenly, a gruff male voice summoned him – "Come here!" — from behind a car in a driveway. When Jess didn't respond quickly enough, the man beckoned him again, this time more insistently. "Somebody's going to beat me up," thought a frightened Harrahill.

As he cautiously approached the man, the boy recognized the speaker as a Monrovia police officer in cas-

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James Bemis is a columnist for the Los Angeles Daily News, *and is writing a screenplay for a film based on the sixteenth-century English Reformation.*

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ual bike patrol attire. He remembered the officer as one whom he had encountered several times before. After explaining himself to the bike patrol officer, Jess was let go, but almost immediately he was again detained, this time by two officers in a black and white unit.)

Monrovia's daytime curfew program was awarded the prestigious 1998 Webber Seavey award by the International Association of Chiefs of Police, the world's oldest professional law enforcement organization. In bestowing its highest honor on the city, the association cited the daytime curfew as one of the three best policing programs in the world. When accepting the award, Monrovia Mayor Bob Bartlett said, "This is an effective pre-delinquent program. It reflects the hard work and joint effort of our community, school district, police department, and the city, who are working together to keep our children in school and out of trouble."

When Police Chief Joe Santoro recommended her sons wear a bright orange card with big black numbers to identify them as home school students, Rosemary Harrahill decided she'd finally had enough.

(According to records, during the 1996-97 school year, police detained and questioned Jess Harrahill and his 13-year-old brother Ben-Joe a total of 22 times under Monrovia's daytime curfew. Once, Jess was forbidden by a police officer from going into a grocery store and told to return home. Another boy, Gabriel Chavez, a student at Calvary Road Baptist Academy, was stopped five times in one day when his year-round school wasn't in session. But when Monrovia Police Chief Joe Santoro recommended her sons wear or carry a bright orange card with big black numbers on it to identify them as home school students and thus prevent further police harassment, Rosemary Harrahill decided she'd finally had enough.)

LOCATED JUST east of Pasadena in the San Gabriel Valley, Monrovia enjoys a reputation as a safe bedroom community, proud to be known as an "All-American City." With a population of 38,000, the city is a favorite of Hollywood filmmakers for its wholesome, 1950s neighborhood feel, serving as a backdrop for the "Beethoven" children's movies, "Picket Fences" television series, and many other films. Crime rates are low, particularly compared with the epidemic of gang lawlessness terrorizing many surrounding communities in the Los Angeles basin area.

For example, during the 1993-94 school year, Monrovia had 17 juvenile arrests for all categories of crime, 5 of these for offenses committed on school property. Four of the 17 arrests were for petty theft, one for assault, one for vandalism, one for burglary of a commercial building. There were no juvenile arrests for daytime residential burglaries. Monrovia was hardly suffering from a juvenile crime wave.

Nevertheless, in October 1994, Monrovia passed California's first daytime youth curfew ordinance. Under the law, minors are prohibited from appearing in public between the hours of 8:30 a.m. and 1:30 p.m. on days when public schools are in session. The ordinance allows four exceptions: when the minor is accompanied by a parent or guardian; on an emergency errand; going directly to work or a medical appointment; or has a school's written permission to be off-campus. Thus, the way the ordinance is written and applied places the burden of proof on youngsters. They are presumed guilty until they prove themselves innocent.

Violators may be given citations by the police, requiring the minor to appear in Juvenile Court where he or she may be given the choice of paying a fine or performing community service. The fine for a first offense may be up to $135; a second offense can range from $270 to $675.

If juvenile crime weren't a problem in Monrovia, why the city's interest in daytime curfews? Traditionally, nighttime curfews are enacted in order to protect youth from the negative influences they are apt to encounter if allowed to wander about late at night. The primary justification for curfews in the past, then, is protection for young people.

Night curfews have other rationale: There's little legitimate reason for teenagers to be out in the middle of the night, crime prevention and detection are much more difficult under the cover of darkness, the risk of injury greatly increases after nightfall. None of these justifications holds for daytime curfews. Teens may have proper reasons to be out, crime decreases in daylight as detection and prevention is easier, and risk of harm diminishes. Thus, there is only one reason for imposing a daytime curfew: That's when most public schools are in session.

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Truancy laws already enable police to return truants to schools during school hours. The daytime curfew, though, extends the school district's attendance-compliance tool to all young people, whether or not they're under the district's jurisdiction.

NOT SURPRISINGLY, the strongest supporters of the daytime curfew were Monrovia's law enforcement agencies and public school administrators – both of whom benefit from the change. For police, day curfews eliminate the presumption of innocence for young people, lowering the enforcement standard from one of "doing" to one of "being." Compliance is thereby made easier to determine and, correspondingly, to control. School officials also liked the idea. Each additional day of student attendance brings more revenue into their coffers from the state.

Rosemary Harrahill, a full-time mom who has home-schooled five kids, is not the crusading type. Despite her initial concerns about the curfew, she was determined to cooperate with city officials and give the program a chance. At first, she says, Monrovia police seemed willing to work with her and other families affected by the daytime curfew law. But her repeated attempts to familiarize police with her children failed to decrease the number of times her kids were detained and questioned.

Another home-schooling mom recommended that Mrs. Harrahill contact the Home School Legal Defense Association (HSLDA) for help. HSLDA — with a team of seven lawyers headed by Virginia attorney and one-time lieutenant governor candidate Michael Farris — provides legal services to home-schoolers for an annual membership fee. Harrahill called HSLDA, informing them of Monrovia's daytime curfew and seeking their advice. By now, similar curfews had been adopted by many other California cities. (A recent *Los Angeles Times* story, for instance, reported that "about 70 to 80 cities across the state followed Monrovia's lead with laws that allow the police to fine truant teenagers.") Also, many communities were considering similar measures. Farris, his interest now piqued, visited Rosemary Harrahill in February 1997.

Mrs. Harrahill asked her friend — and fellow graduate of Santa Paula's Thomas Aquinas College — Andrew Zepeda, a partner in the Beverly Hills law firm of Lurie and Zepeda, to accompany her to the meeting with Farris. Zepeda, whose children are home-schooled, also had a strong interest in the curfew issue. At the meeting, Farris offered Harrahill HSLDA's assistance and Zepeda agreed to be her California counsel. Mrs. Harrahill, though, wanted to try appealing to the City Council for relief. The following March 16, approximately 150 people filled Monrovia City Hall to speak in opposition to the curfew. Despite the protest, the City Council decided against amending the ordinance.

Finally — after Jess and Ben-Joe Harrahill had been stopped more than 20 times in an eight-month period — came the last straw. According to Harrahill and others, Police Chief Joseph Santoro issued bright orange numbered identification cards to kids — her boys were numbers 14 and 15 — whose schedules differed from the public schools.

"It's a police-state mentality," says Mrs. Harrahill. "Innocent, law-abiding kids have to register with the police department to be able to move around freely. Not even a sex offender has to carry a card to prove he can walk down the street." For the Harrahills, the time had come to take on the Establishment, a formidable undertaking against a program praised by so many from President Clinton on down.

SO, ON April 28, 1997, the Harrahills and several others filed a lawsuit in Los Angeles Superior Court against the City of Monrovia and its police chief contesting the validity and constitutionality of the curfew law. *Harrahill, et al v. Police Chief Joseph Santoro and the City of Monrovia* challenged the daytime curfew on five grounds: first, that the ordinance is "preempted" by state law – meaning it trespasses in an area that is the exclusive domain of the state; second, that it violates the fundamental right of parents to direct the upbringing of their children; third, that it violates the parent's constitutional right to free exercise of re-

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ligion; fourth, that it violates the minors' fundamental right to travel; and fifth, that it flunks the "compelling interest test," which requires the government to show that its intrusion upon fundamental rights is justified by its serving some important, broadly beneficial public purpose. Farris argued the case before Judge Carolyn Kuhl on October 27, 1998, assisted by Andy Zepeda.

AT THE trial, Farris and Zepeda blew holes in the city's crime and student attendance statistics. In deposition, Monrovia Police Department Captain Roger Johnson admitted the daytime crime stats were unreliable. Furthermore, a close look at the city's records revealed a 50 percent *increase* in juvenile crime during daytime since the enactment of the ordinance. The ballyhooed improvements in student attendance and reduction in dropout rates were equally misleading. Since the curfew was imposed, school attendance rose only 1.6 percent — not 44 percent, as had been claimed – and this small improvement was associated with an increase in school district attendance personnel. What's worse, in the year preceding the curfew, the high school dropout rate was 2.4 percent, while by the '95-96 year – two years after the curfew's imposition – it rose to 3.3 percent, an increase in student dropouts of 37.5 percent!

This January 27, Judge Kuhl ruled in the Harrahill's favor, striking down Monrovia's daytime curfew law. The judge did not rule on the plaintiff's complaints of harassment or the constitutionality of the law, instead focusing on specific points where the ordinance conflicted with the state Education Code. Kuhl agreed that the ordinance is pre-empted by state law and that it contradicts the California Education code by restricting freedom more severely than state law does. Her opinion says California state law expressly excuses a minor from school attendance for reasons including an illness, medical or dental appointment, a funeral service for a member of the immediate family, and enumerated "justifiable reasons." In Monrovia, however, the ordinance made a youngster subject to citation when "on a public street or in an unsupervised place," in effect, the judge held, broadening truancy's definition beyond what the state says it is, something a city is preempted from doing. Therefore, Kuhl ruled, enforcement of Monrovia's daytime curfew ordinance "is permanently enjoined." According to mayor Bob Bartlett, Monrovia officials are considering their options, including appealing the ruling or revising the ordinance to comply with the state Education Code. Since Kuhl's ruling didn't address the constitutional validity of the ordinance, the city believes the door is still open for amending the law to bring it into compliance. "I don't think the plaintiffs got all they wanted," said David Lawrence, an attorney representing Monrovia.

Michael Farris thinks otherwise. Elated with the judge's decision, Farris believes the ruling will affect daytime curfews in other cities, calling Monrovia's the "linchpin" of the subsequent ordinances. He also reminded the city of their obligation as custodians of the public trust. "We caution Monrovia not simply to amend the ordinance," Farris said, "The judge said our arguments against truancy are "very substantial." Reenactment of the ordinance would provoke another lawsuit, costing the taxpayers tens of thousands of dollars. The Monrovia City Council should instead get tough on real juvenile crime — using existing law — and not waste any more time or money on daytime curfews."

And so ends Monrovia's heavy-handed experiment in imposing a police state on its children – at least for now. Interestingly, the loudest protests against the curfew came from parents, who saw the measure as a usurpation of their role and responsibility, appearing to them as if the city, police and school district were in league to undermine their authority. They didn't miss the underlying assumption of the daytime curfew: That government, not parents, knows where every child should be – in his or her seat at a public school.

MAYBE SOME benefit could result from imposing daytime curfews, but at what cost to parental control, civil liberties, and respect for the prudence of public authority? As Michael Farris says, daytime curfews are "a tool of martial law. We don't believe that the city is a war zone. Americans live in a free country and people are supposed to be able to walk on the street" without fear of police harassment. In their zeal to solve what was a – pardon the pun – minor problem, Monrovia public officials provided a cure far worse than the disease. CPR

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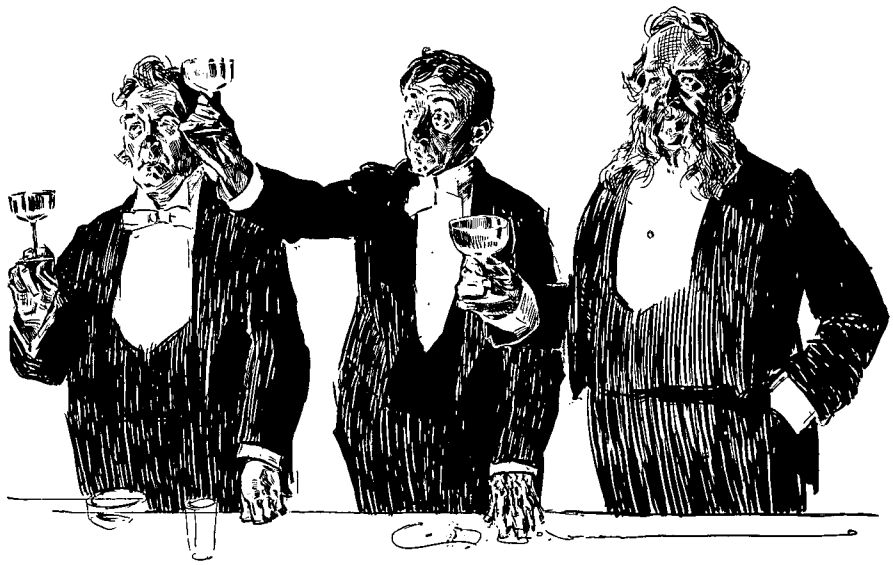

PRESIDENTIAL CANDIDATES

by William E. Saracino

I THOUGHT ALL this "Y2K" computer business was hard to comprehend until I started thinking about the choices Republicans have among presidential candidates during the dreaded Y2K. We are presented with a crowded field. Yet it is a field I think contains candidates with fewer actual differences than any in my memory since 1968, when the effective choice was Richard Nixon or Nelson Rockefeller.

This is not necessarily a bad thing for either the conservative movement or the GOP itself. One of the reasons there are not the dramatic differences of a 1964 or a 1976 is that functionally all the important arguments except abortion have been settled — basically by broad consensus within the Party.

Now I know that many of my conservative brethren will disagree strongly with that sentiment. Some of them have already chosen a one and only "true conservative" in the bunch. Others have created their "unacceptable under any circumstances" list. But a cool-headed review of the candidates' *actual* positions — as opposed to where we wish them, for good or ill, to be — will reveal broad agreement among our contenders.

The media and the Democrats will encourage us to mistake candidates' style for their substance, as that precipitates our internal bloodletting. We do not need to fall into that trap. Often in the heat of battle we forget that a different nuance on a position is not the same as a substantive disagreement. Even accounting

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for substantial agreement among the candidates on most issues, there are still plenty of differences — even if mainly stylistic — on which to base our choice.

Using alphabetical order so as not to give away the deeply held secret of my own personal preference (*psst,* it is for the very wealthy publisher of a nationally-prominent business magazine), California Republicans are likely to face a ballot listing Lamar Alexander, Gary Bauer, George W. Bush, Elizabeth Dole, Steve Forbes, Alan Keyes, and Dan Quayle. Pete Wilson recently dropped out and, while Pat Buchanan has made no official announcement, he has done absolutely nothing to prepare for a run. Most of his infrastructure from '96 is already committed to other folks, mainly Bauer, with some spill-over to Keyes, Forbes, and even a couple for Alexander. "Conventional wisdom" is that Bauer would not have run without a clear signal from Buchanan that Pat would not also run. I'm still waiting word from the Draft Stassen Committee.

I pair Quayle and Forbes as "hard right/mainstream conservative." I am tempted to include Bush. Based solely on his record, that is where he belongs. But still there is a nagging doubt. It might be an unfair hold-over antipathy toward his father. Or it might be I don't want Phyllis Schlafly to take back my autographed copy of *A Choice, Not an Echo.*

It is a formidable list actually, and one that puts the lie to any worry of the GOP being without a large field of quality candidates. But how to break this list down in a way easily understood by the average reader — let alone the average voter?

I could use a financial yardstick, observing that Bush and Forbes are the only ones guaranteed of competitive financing, so the nominee will be one of them and thereby end this article. But let's put finances aside at least for a moment and first address ideology.

TRYING TO be fair when writing about politics is somewhat alien to me, as I usually write about liberals and worse, toward whom "fairness" is simply not feasible or even called for. Being as judicious as possible however, I think it is fair to put Gary Bauer and Alan Keyes together in a "hard right" group. Keyes more than Bauer will be a "Johnny one-note" on abortion, though Bauer will certainly make "life" a centerpiece of his campaign. Both will likely seek an identity as the "most conservative" of the candidates and will focus on social issues to cement that claim.

Next I would pair Dan Quayle and Steve Forbes as "hard right/mainstream conservative" entries. These two have "establishmentarian" credentials that Keyes and Bauer cannot match. They both have well-defined profiles on economic issues, but have also stressed strongly conservative social stands in their speeches.

Moving along, we would then come to the decidedly undynamic duo of Lamar Alexander and George W. Bush. Out of personal belief or political stratagem, these two will most likely attempt to be seen as the "broad appeal" conservative choice. Other than the L.L. Bean vote I truly don't understand what appeal Alexander might have. His politics are transparently opportunistic and his campaign style is, well, quoting that old Marxist, Groucho, "I thought my razor was dull until I met this guy."

I am tempted to take Governor Bush out of this pairing and include him above with Dan Quayle and Steve Forbes. Based solely on his record, that is where he belongs. But still — still there is this nagging doubt. It might be a totally unfair hold-over of antipathy toward his father. It might be that I don't think our conservative philosophy has to be hyphenated, as George W. does when he describes himself as a "compassionate-conservative".

Or it might be that I don't want Phyllis Schlafly to come and personally take back my autographed copy of *A Choice, Not an Echo.* I just don't think Governor Bush has the same bedrock conservative core that Quayle, Forbes, Keyes, and Bauer do. That certainly doesn't mean he isn't a conservative in many ways — just that the doubts still linger. These doubts may in fact work for him in the long run with an electorate that, alas, does not always share my world view.

That leaves Elizabeth Dole as unclassified. It's a fair

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thing to do for Dole, as I am frankly unfamiliar with her views on most of the great issues of the day, viagra excepted. I would expect her to position herself in the Alexander/Bush "broad appeal" conservative camp, but there really is no telling. I think Liz Dole deserves the conservative label at least until proven otherwise because that is where I think she probably is and is certainly where she will campaign, regardless of the true location of her political heart of hearts. Given lots of opportunities to follow the Betty Ford or Christie Whitman road, she has taken none of them.

AND SO, even with Pete Wilson removed from the field, we still have just about "one of everything" from the GOP spectrum, except, perhaps, a true pro-abortion zealot. Given this field, with the realistic choices all being various shades of conservative, it is possible that ideology will not be the deciding factor. If the philosophical tests become muddled or confused through "mass agreement" on issues, money and organization will emerge as decisive factors. Politics, especially at the presidential level, has long been a game of "show me the money" as a pre-requisite for candidates either to be competitive or to be taken seriously by the national media. That will be even more true in Y2K because of the states' mad scramble to the front of the nominating process. Everyone wants to "have an impact." What everyone really wants are the millions of dollars that a full-blown primary or caucus contest injects into the parochial economy. So many states, touched by this mania, have moved their primaries and caucuses to early in the year that the nomination will likely be decided in an all-out February 1 to March 15 wind-sprint.

This trend has really gotten out of hand and the RNC should step in to restore some order. The Party benefits from a more drawn-out nominating process. Candidates, like wine, sometimes change drastically after the bottle is opened and they are exposed to the air. Sometimes they change for the better. Other times you thank your lucky stars that you only bought one bottle of the stuff instead of the whole case you were contemplating. A six-week nominating process — equivalent to giving a wine two seconds to breathe before judging its full qualities — allows candidates too little time to show their true strengths and weaknesses — too little time to be sure if we are buying a case of Silver Oak or Night Train. The RNC would do well to address this subject seriously before 2004 and impose a more drawn-out schedule.

But the Y2K six-week sprint is set. That means money will probably decide the finalists and eventual winner, which makes it highly likely the Republican nominee will be named either Bush or Forbes (both, by the way, much closer to a Silver Oak than a Night Train).

Certainly organization and ground troops will still count for a lot in the Iowa caucus and New Hampshire primary. But the onrush of large state primaries in the four weeks *after* Iowa and New Hampshire remove much of their past ability to make or break candidates' standings. 1996 had a primary and caucus calendar almost as "front loaded" as next year. A man in a red plaid shirt got the boost coming out of Iowa with his surprisingly close third place finish. A guy who preached trade protectionism while driving a Mercedes got the boost by winning the New Hampshire primary. Both of these candidacies collapsed within a month because they ran out of money.

IOWA AND NEW HAMPSHIRE will have about 65 to 70 convention delegates between them. California by itself will have 100 more delegates than those two combined. When the third Tuesday in March is over, close to 80 percent of all delegates will have been chosen. The candidate left standing in mid-March will be the one capable of continuing to finance a campaign in the large states in

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the face of possibly disappointing results in the early small contests. That, it seems to me, brings us back to George W. or M. Steve standing on the podium in Philadelphia accepting our nomination.

BUT IF a surprise were to emerge, I would expect it to be Mrs. Dole. She is a forceful speaker who manages to be charming and convincing at the same time. She does not have baggage from past political campaigns, so she has the freedom to tailor her image to fit whatever mold she pleases. Her husband, always a better "rain maker" than actual candidate, can use his skills and contacts to make her competitive financially through the early contests. Were she to win or place second in Iowa or New Hampshire, the novelty of her gender might turn the race totally topsy-turvey. She will surprise voters by how strong her presence is on the hustings and during televised debates. The only real competition she has in the oratory department comes from Keyes and Bauer. Both of them however tend to give sermons instead of campaign speeches, which is fine unless you're running for public office. The phrase "silver tongued" will never be applied to any of the rest of the field.

California could be a wild card if it decides to have caucuses or a state convention instead of a statewide primary election. Either the caucus or convention option would put the premium on organization and volunteer strength and severely limit the advantages of the Bush and Forbes bottomless checkbooks. Because both caucuses and conventions are so open to manipulation by a small minority, I think either one would be a highly dangerous option for conservatives. We know how to win statewide primary elections in California. Changing to any other format would be taking a needless risk.

State Sen. Ray Haynes is proposing a "winner-take-all by congressional district" plan that is sort of a neutral. On one hand, it guarantees that even were Gary Bauer to carry the state, we could expect one or more of the less conservative candidates to have 10 to 20 percent of the delegates. On the other hand, it also insures that conservatives would probably also have a noticeable minority presence even if, say, an openly liberal Libby Dole were to win the primary. Maybe it is just my sense of "neatness," or my fond memories of 1964, but I like the idea of a united delegation, with one voice and view, even if that means getting shut-out when we don't win statewide. Barry Goldwater received 51.5 percent of the vote in the California primary. While it is doubtful that even a vengeful and disruptive pro-Rockefeller 48.5 percent of the California delegation would have endangered Goldwater's eventual nomination, it certainly would have made things inside that delegation much less pleasant. Let's also remember 1976, when Ronald Reagan blasted Gerry Ford, receiving nearly 70 percent of the vote against the accident from Michigan. As a member of that delegation I know how deeply I would have resented having 30 percent of my fellow delegates be Ford-ites. I also know that the hostilities from such a split delegation would have lingered on for years, much longer, I think, than the actual Ford/Reagan chasm lasted. So do we openly admit our fear that we cannot carry the state for a unifed conservative coalition behind one candidate next year? Do we go for the Ray Haynes "insurance policy," secure in the knowledge that any delegation would then have a hefty conservative minority? Or do we "double down," hoping for a 100 percent conservative delegation? It is a close call in my opinion.

A GOOD FRIEND of mine has observed that the history of the post-Reagan election years is one of conservatives indulging ourselves in internal feuds over relative trivialities, dividing among several candidates and allowing true "non-conservatives" like George Bush and Bob Dole to snatch the nomination. This is true, though I'm not sure how relevant to our current situa-

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tion. As I said above, I think everyone except Pete Wilson among the candidates probably deserves the label "conservative" in some way. And also as stated previously, this is because, other than abortion, there is little in the way of substantive disagreement in the Party.

Let's face it, we conservatives don't have a bogey man this year. I got into politics in high school for Barry Goldwater. We had great bogey men in the old days. Whether it was Screwtape himself, Nelson Rockefeller, or one of the lesser Wormwoods — Kuchel, Scranton, Percy, Romney, Javits, or Ford — we had opponents truly worthy of our scorn, derision, and deserving of political extinction. Ah, those were the days. It made politics easy to understand and easy to compartmentalize the good guys from the bad. The dynamics simply have changed too much, at least for this coming presidential contest. Frankly, my conservative pals, none of the other possible choices are fearsome or worrisome enough to animate me to active opposition. As already indicated, my choice is Steve Forbes. I think he has delivered the most consistent and eloquent conservative message over the past three years. And I think there is absolutely no question that he would make the best president of any candidate in either Party. Whether he can overcome the "nerd" factor is another question.

Alan Keyes or Gary Bauer as the GOP nominee would probably make 1964 look like a cliff hanger, although the argument can be made that equally powerful "residuals" would come from their campaigns as came from 1964. I personally don't buy that, but don't think it is a totally unsupportable argument either.

Dan Quayle and Lamar Alexander strike me as unlikely to generate sparks among our electorate. So that brings us back to Mrs. Dole and George W. I yearn for a domestic Margaret Thatcher. Unfortunately there is nothing in Libby Dole's background or public statements that allows me to consider her a likely claimant to that title. However, neither is there anything in Mrs. Dole's background or public statements that make it fair to label here as another Christy Whitman, as some in our movement have already done. We shall simply have to wait and see how she reveals herself on the campaign trail — and then ask ourselves if we believe it.

AND THUS to George W. I suspect that both Governor Bush and Mrs. Dole would be mixed blessings for conservatives if either made it to the Oval Office. Certainly we would have to fight for our positions more fiercely than with Keyes, Bauer, Quayle or Forbes sitting behind the "big desk." But I am not willing to rule them out as worthy of my vote come November of Y2K, and here's why. It is highly likely that whichever Party elects the next president will also control the next Congress. In spite of what I admit is strong evidence to the contrary, I believe that a Republican president *and* a Republican Congress would enact significant portions of our conservative agenda. *That,* I believe, is the key to a future of unbroken dominance for conservative ideas in the American body politic.

Let the American voter see that our ideas work. From tax cuts to vouchers, from missile defense to respect for life, a Republican president and Congress could present powerful evidence of the validity and practicality of our ideas. We in California — for once — likely will be significant players in the GOP nomination drama. By all means let's go for it all next year, and try to nominate and elect a true conservative champion. May the best man (or woman) win. CPR

Correspondence

(Continued from page 2)

a similar position, but for a real exercise in sound-bite debate, try to build something. The counter barrage of junk science, twisted logic, and blue sky statistics from self-proclaimed environmentalists will be astounding

Even so, conservatives has superb issues available to them.

A smaller, less intrusive government would be high on my list. Californians don't need or want the state to become their surrogate mother. Adults are perfectly capable of being responsible for their own actions. We certainly don't want our new "mother" reminding our children to wear their rubbers when they go out. A reduction in taxes would seem to be a no-brainer. In an era of surplus, Democrats insist on spending the extra and asking for more.

Education will continue to be a major item. While Governor Davis has directed some worthwhile education initiatives, they will likely fail. Fundamental structural changes have not occurred and the new directives will be implemented by the same people who drove our K-12 schools from first to last in the span of a single generation.

Affirmative action, originally designed to jump-start the black population into mainstream society, was a good idea because it worked. The challenge now is what to do with

(Please turn to page 27)

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Fixing Education in 1999

It is Gray Davis's 'first, second, and third priority,' which means plenty of proposals for more spending. But true reform requires only a few basic steps.

Steve Baldwin

Today's number one issue in California is education. It was the single most talked about topic in last year's campaigns statewide. Our new governor, Gray Davis, has said that education is his "first, second, and third priority." While everyone seems to agree that something must be done about education in our state, there is heated debate over the many proposed solutions, reform plans, and increased spending proposals being discussed to solve our education problems. Unfortunately, until we agree what has caused the mess we're in, we'll never be able cure that which ails our schools.

During his campaign for governor, Gray Davis proposed forcing parents to sign a "contract" that would require them to participate in the education of their children. In his inaugural address Davis three times emphasized that students would have to work harder. Our schools are faced with many problems, but the willingness of students to learn is not one of them. It may be convenient for Davis to blame students and parents while only making a cursory reference to the education establishment, but that, in fact, is where the problem lies. The education professionals and the education establishment have failed our children.

Blame may be shared equally by everyone who took a turn at the switch over the past 30 years; members of the Legislature, governors, school superintendents, administrators, and education bureaucrats. And while we are at it, we must not forget the educational theorists who thrust such "experiments" as whole-language reading, new-math, and *new* new-math on the minds of our children.

Because of the popularity of the issue, throughout the coming year the California Legislature will witness an onslaught of education "reform" proposals. We will see 10-point plans, and "specialized" teaching programs. We will see efforts to tinker with the curriculum, and all kinds of proposed compacts and contracts

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between parents, students, teachers, law enforcement, and maybe even the Department of Motor Vehicles. Through it all, we will see proposals for more and more spending.

One thing is certain: money is not the solution to our education problems. We now spend more than $7,500 per student each year — nearly three times what it costs to educate a child in a private school. In California, spending on education has increased steadily over the past decade. Our Constitution was amended a decade ago to require that at least 40 percent of the state budget be spent on public education. Last year we spent even more than that. Still, test scores continue to plummet.

It may be convenient for Davis to blame students and parents while only making a cursory reference to the education establishment, but that is where the problem lies.

In a failed 10-year experiment in Kansas City, a "cost is no object" approach was embarked upon to improve inner-city schools. Teacher-to-student ratios were reduced to 13-to-one. Teachers were paid more and per-pupil spending exceeded $11,000! But the results, surprisingly, were *no* increases in test scores — upholding my claim, that money is *not* the solution to our education problems.

California's schools are begging for reforms that have little or nothing to do with money. Accountability at the local level must be the first step. Principals should be able to fire unsatisfactory or lazy teachers on the spot, and they should be able to offer raises and promotions to the shining stars of their faculty — without having to check first with some far-away bureaucrat.

We must allow parents a greater say over how and what their children are taught. Schools must be compelled to provide parents with their children's curriculum, and grant parents the opportunity to examine all instructional materials and facilities. If anyone does try to sneak materials full of risqué social situations into a classroom, the parents won't be forced to discover it by accident.

Finally and most importantly, until our children are performing on par with the rest of the country, we should put an end to all the experimental teaching practices and return to basics. To survive in the modern workplace, to go on to college, and to succeed in the high-tech world in which we live, everyone should know how to read and write and perform simple mathematics. Isn't this the primary objective of our public school system? Kids who are failing in these areas should not be promoted and they should not be wasting time on electives and other "fun" classes until they are making basic educational progress.

Contrary to what Governor Davis thinks, although our schools are a mess, the kids are not to blame, and the vast majority of parents are not to blame. The failed education establishment in this state is responsible. If we are to reform public education in California we must change how and what our children are taught, and we must change it now. Too much is at stake. California's future, and the future of each and every child yet to graduate are dependent on what we do now. CPR

Correspondence

(Continued from page 25)

those left behind. Affirmative action won't convince those four homies cruising in their stolen car to give up the gun under the seat. Tough love and economic development might be helpful, and that won't come from the Democrats.

The primary challenge for the next decade, however, is not diversity, but assimilation. The left is wrong. We are not a multicultural society. We are a multi-ethnic society with a single, uniquely American culture. Uncontrolled borders, bilingual education, and other well-intentioned schemes further fracture our society and are counter-productive.

In the final analysis, though, it is impossible to implement any changes without a seat inside the Capitol. So, to borrow the motto of the 9th Infantry, "Keep up the fire!"

Jim Root
Monterey

John Kurzweil responds:

I commend your all-to-rare willingness to return and

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between parents, students, teachers, law enforcement, and maybe even the Department of Motor Vehicles. Through it all, we will see proposals for more and more spending.

One thing is certain: money is not the solution to our education problems. We now spend more than $7,500 per student each year — nearly three times what it costs to educate a child in a private school. In California, spending on education has increased steadily over the past decade. Our Constitution was amended a decade ago to require that at least 40 percent of the state budget be spent on public education. Last year we spent even more than that. Still, test scores continue to plummet.

It may be convenient for Davis to blame students and parents while only making a cursory reference to the education establishment, but that is where the problem lies.

In a failed 10-year experiment in Kansas City, a "cost is no object" approach was embarked upon to improve inner-city schools. Teacher-to-student ratios were reduced to 13-to-one. Teachers were paid more and per-pupil spending exceeded $11,000! But the results, surprisingly, were *no* increases in test scores — upholding my claim, that money is *not* the solution to our education problems.

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The Front Line

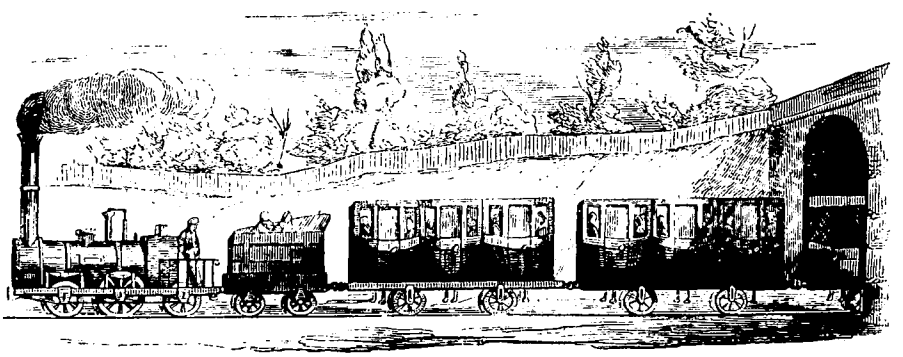
(Continued from page 5)

centration is placed on capturing, communicating with, and keeping track of volunteers. In the majority of the successful programs the leaders are diligent in keeping the institutions of the Party focused on consensus building ("Party building") activities such as GOTV rather than "Party demolishing" activities such as active primary election participation.

There are no short-term solutions. A centralized California GOP grassroots effort, which the Lungren campaign at least began to try to create in 1998, is unwieldy, especially in such a large and diverse state, and it increases local resentment. Decentralization, with central support by the California Republican Party's "Technology Project" (computers, databases, and software were given to selected counties during the 1998 election) was a useful move toward localization. But it would be greatly enhanced if long-term field staff were on the ground in these counties for at least one full cycle to secure for the young permanent organizations a firm foundation.

Republican elected officials should take political "ownership" of their geographic turf, particularly now that GOP legislation is not boiling on Sacramento's front burner. They will have a greater impact on policy later if they imitate Democrats now by spending additional time concentrating rebuilding local political infrastructure.

In many counties the grassroots organizations built in the fall of 1998 are again wilting from neglect. Now, while California Democrats are thinking about reinventing government, Republicans should start thinking about reinventing the grassroots wheel. CPR



Correspondence

(Continued from page 27)

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Not long ago (and still in many Republican circles) it was simply unthinkable to contest the conventional wisdom on these issues. Thank God Ward Connerly, Glynn Custred, Ron Unz and a relatively few others ignored the conventional wisdom.

And Ronald Reagan ignored it when in 1982 he said: "Simple morality dictates that unless and until someone can prove the unborn human is not alive, we must give it the benefit of the doubt and assume it is. And, thus, it should be entitled to life, liberty, and the pursuit of happiness." Can we not rationally discuss the issue along these lines? And to Hell with the left-wing clowns who want to intimidate us out of our role as sentient beings.

And anyway, the point is not to find an issue to ride into office, but to find an office to ride to better times regarding issues. The GOP has allowed the tail of elections to wag the dog — issues — to so great an extent, it is all but irrelevant to average voters. CPR

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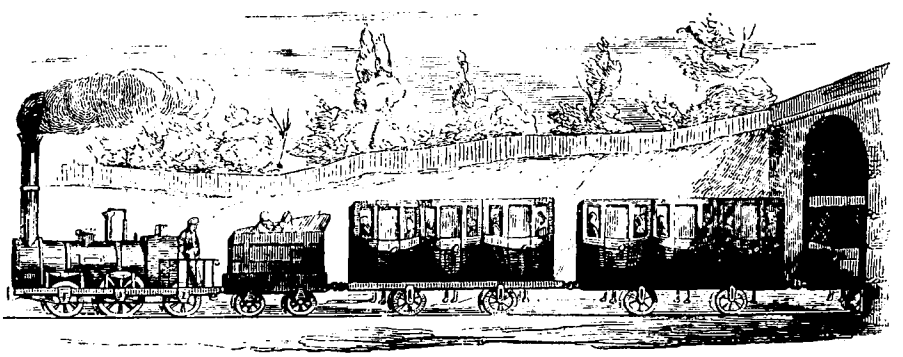

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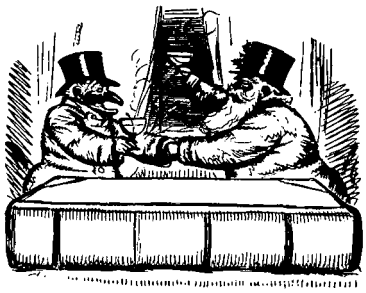

CRITICUS

Christened on Tuesday

BY G. B. TENNYSON

Solomon Grundy,
Born on a Monday,
Christened on Tuesday ...
— Anonymous

AND WHAT is your Christian name?" asked an Oxford college recording clerk of the American exchange student. "Well, er, I don't have one. I'm not Christian." "Come, come," said the clerk. "Everyone has a Christian name. What do they call you?" "Noah." "Ah, you see. As I thought." Then writing in the register and speaking mostly to himself, the clerk, said, "Yes: surname Greenberg, Christian name, Noah."

Our hypothetical student could just as easily have been named Thomas Williams or William Watt and yet have offered a similar answer. Noah, Thomas, and William can perhaps be forgiven for lack of familiarity with the still current English term "Christian name," as it has not been used in this country outside of parish registers for several generations. Americans say, as essentially do the French (*prénom)* and Germans (*Vorname),* simply "first name" or, less often, "given name." Americans have also largely lost the word "surname," using instead "last name," or, less often, "family name." Criticus likes to attribute all this, as he does everything he disapproves of, to ignorance, stupidity, malice, and general apostasy. In retaliation, he has long enjoyed tormenting students by asking them to provide a surname rather than accepting "I'm Kaitlyn" or "I'm Mike," for Criticus is one of those dinosaurs who still address students as Mr. or Miss followed by the surname. Once a Mike innocently replied, in the spirit of the exchange student, "But I'm not a 'Sir.'" To be sure ....

The evanescence of the term "surname" doubtless falls under the categories of ignorance and stupidity, but the disappearance of the term "Christian name" doubtless stems from the malice of those who have banned religion from public life and the apostasy or quiet falling away from belief of all the rest. For, even prior to the current widespread veneration of the idea of diversity, the linkage between a given name and the source of it, namely the christening ceremony, had been lost. "Name this Child," reads the Prayer Book baptismal service, at which point the godparents (yes) provide a name. And in earlier times this ceremony would most often occur on the third day after birth.

G.B. Tennyson addresses students by their surnames in the English Department at UCLA. His latest book, A Barfield Reader, *was published in January by the Wesleyan University Press.*

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The third-day tradition is how the birthdates of such as Shakespeare were inferred, there being no specific, independent record of his birth. And the names were indeed *Christian* names as sanctioned by the Church. Now the names are recorded at the hospital, passed on to state authorities, and the christening, if any, will take place later, probably very much later. As for the names, well, they have changed too.

Criticus likes to attribute all this, as he does everything he disapproves of, to ignorance, stupidity, malice, and general apostasy.

CONSIDER THE following: Coleman, Connor, Grant, Hayes, Hunter, Mason, Morgan, Ryan, Tyler, Wade, Wilson, Wyatt. What do these all have in common? You may well answer: they are all surnames or last names. True enough. But they are all also "Christian" names, given names, first names. That can no doubt be accommodated into your thinking. But the further and rather more surprising fact is that half of them belong to girls, and I defy any reader to choose which ones. All of these names have been bestowed on children five years of age and younger, all known, more or less, to Criticus himself. That is to say, Criticus has encountered these names in the past few months among relatives and acquaintances and a nursery school enrollment register. Of course, this also means that all of these names are being carried about by members of the well-to-do white middle class. But what does it all tell us?

In the first instance, the popularity of any given name is a function of shifting trends and fashions, even when the shifts were among the more traditional names. Saints, biblical figures, kings and queens, lords and ladies, characters in tales and legends, adventurers and courtesans all might influence the popularity of names during earlier periods. In more recent times, public figures of every sort — military leaders, entertainers, professional athletes, miscellaneous celebrities, rock stars, rogues, barmaids, and such like — would contribute to the rise and fall in popularity of certain first names. To say nothing of sheer zany invention, such as the late Frank Zappa's naming his hapless children Moon Unit and Dweezil. At the same time, the old standards usually held their ground. But in America some things new have entered the mix, at least among the white middle class.

One somewhat new thing is the increasing use of surnames as first names. This is not absolutely new and not solely American. The British deride it as peculiar to the United States, but one need not look far to find examples in the United Kingdom, though there it tends to be more upper-class than middle. A certain celebrated Poet Laureate named his first son Hallam because of his reverence for the memory of his college friend who died young and became the subject of the poet's *In Memoriam,* namely, Arthur Henry Hallam. Subsequently there was a great grandson of the Laureate also named Hallam, which does seem to be overdoing it. The guilty parties' surname was Tennyson. Then there is the case of P.G. Wodehouse, which is shorthand for Pelham Grenville. Now we know why some folk use initials. Still, the surname as first name has reached its greatest vogue in the United States. America has had presidents first-named Millard, Rutherford, Grover, and Woodrow (and two borderline cases named Franklin), all of them born in the nineteenth century, not to mention that other (regional) American president with the first name of Jefferson. The South has generally been more given to the use of surnames as first names than most other sections (Meriwether Lewis, Wade Hampton, Ross Perot) but the practice can be found throughout the country (Washington Irving, Sinclair Lewis, Rockwell Kent). It probably emerged for dynastic reasons, that is, to establish connection with a related, usually the mother's, family, a practice more common yet in middle names where it continues to abound nationwide. To move a family name to first name status may also have been a way to avoid the cumbersomeness of hyphenation, so much favored over the centuries by Europeans (and pretentiously by American female athletes and professional women in the present). The European practice tends to lead to some weighty names (de la Motte-Fouqué, von Droste-Hülshoff, von Thurn und Taxis), and in some extreme instances to triple hyphenation (the much loved von Saxe-Coburg-Gotha), or by a further convolution to double but unhyphenated surnames, as in Lloyd Weber or Parker Bowles. Criticus once encoun-

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tered a triple unhyphenated surname but it has been lost in the dark backward and abysm of time.

ALL OF the above, however, is but an intensification of established albeit uncommon practice. Moreover, many surnames were themselves originally Christian names, but until lately time and convention have operated to separate them. What seems truly new is the unisex character of the current wave of surnames as given names. It is not absolutely clear how this fad got underway. A probable influence is the increasing frequency of surnames as first names among actresses. Even Criticus, who tries to keep his mind unspotted from such ephemera, can think of actresses with first names like Cameron, Hunter, Lindsay, Meredith, Morgan, and Tatum. No doubt there are many others. Even were these all what they used to call stage names, the choice of surnames as first names tells us something about contemporary mores and points to a future that is already here. It is one thing, and often an engaging thing, to have men going about with names that sound like Confederate officers, especially when they are little boys wearing tricorn hats and brandishing toy sabres at birthday parties, as Criticus recently witnessed. It is quite another to have women going about with the same names.

It was widely reported in Britain that for the first time in centuries John was no longer among the top 50 names for newborn boys. Jack stood at number one.

Criticus believes that the hidden culprit in all this confusion is nothing less than the feminist in the woodpile. While there are surely cases of surname-as-first-name women before the women's movement, they are relatively infrequent. Do not cite Her Grace the Duchess of Kent, who goes by the name of Princess Michael: she took on that name on her own, perhaps to obscure the fact that she was the daughter of a German general and had a predictably German general's daughter's name, which, however, I have forgotten — Irmgard? Helga? As Bob Dole would say, Whatever. It does seem perverse of her to have taken the same Christian name as her husband, thus giving us Prince Michael and Princess Michael, which sounds like a marriage made in *La Cage aux Folles*. And cite not the authoresses Clemence Dane and Radclyffe Hall: the first was a pseudonym, the second the suppression of a Christian name, Marguerite, in favor of a middle name. (I omit George Eliot because she chose an unmistakably masculine pseudonym, not a surname-as-first name; but I do look with deep disfavor upon Currer, Ellis, and Acton Bell, surnames-as-first-names and pseudonyms adopted for a time by the Brontë triad.) No, the proliferation of females with surname-as-first names looks suspiciously like part of the vast feminist left-wing conspiracy to convince little girls that they should abandon Barbie for GI Joe and the doll house for the mud puddle so they can be like little boys.

Generally pessimistic, Criticus nevertheless sees a ray or two of sunshine behind this cloud and is a bit doubtful that this latest assault on human nature will really work. What is more likely to happen is what has happened in the past whenever a boy's name has been bestowed upon girls. A Gresham's law comes into play. Consider, for example, the fate of such as Beverly, Evelyn, Hilary, Marion, and Shirley, all in the past masculine names. Once they were transferred to girls, they ceased being assigned to boys. Somewhat later Leslie and Robin suffered a similar fate, though the British strove for a time to distinguish a feminine Lesley and a feminine Robyn from the traditionally spelled male names. It never caught on in the colonies. And one can see why. Quite apart from the American tendency to spell names every which way, thus obscuring any male-female distinction, unisex names are simply confusing. When Evelyn Waugh wooed and then married Evelyn Gardner, friends took to referring to them as the "He-Evelyn" and the "She-Evelyn," rather like beasts in the jungle. The two Evelyns later divorced, though presumably not because of their names, and the He-Evelyn married a woman named Laura. On the other hand, that couple went on to name one of their sons Auberon, which appears to be the French spelling for the name of the King of the Fairies. No wonder he chooses to be known to his friends as Bron.

CRITICUS, WHO has a cousin for every occasion, has one for name confusion. About 20 years ago this worthy cousin brought into the world a son she named Justin. But from the start he was addressed by his middle name, not for the usual reason that Justin was his father's name (it

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wasn't) but because, as cousin explained it, "If you're in the supermarket and you call out 'Justin!' every little boy in the place will come running." Criticus suspects that the same may be true of Jason, which became popular around the same time. Both of these J-names are still on, and doubtless in, the market, but their sell-by date has largely passed. This will surely happen also to the Morgans and Lindsays as mothers call for them from the ladies' room and find a ragtag gaggle of girls and boys pouring in.

A white official of the District of Columbia government so offended black workers when he accused himself of being niggardly he was fired by the black mayor.

WHETHER THE sorting out from unisex names will signal a return to traditional names is not clear. Everyone has probably read that *Jose* is now the most common name for newborn boys in both California and Texas, for obvious reasons, and that this reveals a resurgence of ethnic names, even though nationwide Michael is still the number one boy's name. (Kaitlyn *[sic]* is, believe it or not, the number one girl's name) So, along with surname-as-first name, ethnic names are becoming popular. There is already an established history in the black community of made-up, bizarrely spelled, distinctively black names. Criticus will reserve that topic for some future eyebrow raising. But, unlike the surname-as-first-name, these ethnic names are usually sexually distinguishable. And by the time this generation of *Jose's* has its own children, the parents may not want all of them to sound like your gardener. They may even move to that other, so far unnoticed trend, that Criticus has observed running in a small quiet rivulet alongside the torrent of Tylers, Grants, and Ryans, namely a re-emergence of truly traditional names. Again, drawing on his familiarity with that one, admittedly limited but still trend-setting, stratum of childbearing society that he knows, Criticus is acquainted with little ones named as follows: John, Katherine, James, Henry, Emma, and Luke. Some are even in the same families as the surname-as-first name children, suggesting that the shift is occurring right now. Even across the water this may be happening. Although it was widely reported in Britain that for the first time in centuries John was no longer among the top 50 names for newborn boys, Jack stood at number one, followed by Thomas, James, and Daniel. On the other hand Mohammed occupied the number 34 spot. Every country seems to have immigration problems.

As Constant Readers know, Criticus has long been anything but niggardly on the subject of names (see most recently the May/June 1998 *CPR* column, "Naming Names"), so in addition to my present animadversions on Christian names, I can hardly resist a comment or two on the much reported "Niggardly" issue out of the nation's capital. That brouhaha has above all to do with political correctness, but political correctness has above all to do with words, especially with words for group names and group designations and these in turn impinge even on proper names, as we shall see.

All readers will recall that a white official of the District of Columbia government so offended black workers when he accused himself of being niggardly that he was fired by the black mayor of that three-quarters black city. Once again ignorance was in the saddle. It appears that the multitude thought the word "niggardly" had to do with what is now known as the "N-word," when in fact it has no relation to it. Even the media, normally ready to beat any white person with the stick of racism, came forth with explanations of the two quite different words. The one comes from old Germanic sources for miserly, the other from Romance languages, especially Spanish and Portuguese, for black. Chaucer used "niggardly" in the fourteenth century; the N-word is first recorded at the very end of the eighteenth century. If the two words have anything at all in common it is the fact that English, unlike its purer Teutonic sisters and Romance cousins, is an unusually hospitable language, taking words from any and all sources, and therefore often enough coming up with similar sounding words that have totally different ancestry and meaning. It is the price English speakers must pay for the richness of the English vocabulary and all the resulting puns.

Naturally, none of the learned explanations satisfied those who objected to the useful word "niggardly." They claimed that, regardless of the meaning of the word, it *sounded* offensive and was therefore unaccepta-

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ble. In this vein the *Los Angeles Times* printed the views of three local black students, only one of whom thought the use of the term at all defensible. The other two said in effect that if the word was received as an insult, then it was. This is the perception-is-reality school of thought. One — who confusingly claimed to be "ethnically Creole" but "racially African American" — tried to draw an analogy with the word "gay," writing that she would not use it to a gay person to mean jolly or pleasant lest it be misunderstood. But this is itself to misunderstand the point. "Gay" does now carry the dual connotation; if anything the earlier meaning has been almost forced out of use. But "niggardly" has no such dual meaning. To object to it because of a similarity in sound is to raise the possibility of objecting to all words that sound the least bit like some offensive word.

Clearly what is needed is another UN commission to monitor usage and ban inadvertently offensive words and to pass judgment on the suitability of names.

TO PROHIBIT the use of possibly offensive-sounding words is to open not just a can of worms but to stir up a nest of vipers. Remember the flap a year or so back, reported in this column, over the term "Okie Girl" as the name of a restaurant and "Top Wop" on a license plate, both of them chosen by the bearers with pride. These were, however, not sound-alikes but affirmations. Imagine, however, what would happen if in less tolerant company one used innocently any of the following terms: whopper, ok, jewelry, spick and span, frog, polecat, chink, hunky, jig, de-greaser, dayglo — well, the list could be expanded and all words on it could be banned. A few years ago a civil rights group became agitated upon discovering a plaque at Hoover Dam memorializing a dog who had been a pet of the workmen. The dog was named "Nig." Why it was thus named I don't remember, but the name and memorializing were held to be offensive. For all I know the plaque was removed. Then during the current "niggardly" controversy Criticus trolling through the newspaper came upon a story about a University of Florida scientist who has found a safe substitute for malathion. The gentleman's name is Herb Nigg. We must hope he never walks the corridors of power in Washington and has anyone call out to him by his surname alone. "Hey ...."

Clearly what is needed is another UN commission to monitor usage and ban inadvertently offensive words and to pass judgment on the suitability of names, much as Continentals still do with their lists of acceptable first names. Exactly how the French cope with their large body of Algerians I don't know, for the French have been especially rigorous in enforcing the use of only approved names from the list. Yet one finds it hard to believe that the often recalcitrant Algerian minority is naming its sons and daughters Michel and Jacqueline. Perhaps the authorities have allowed a separate Algerian list, much as they have recently ruled that Muslim girls may wear the distinctive Muslim female headgear to school. Traditionalists are outraged; the National Front considers action. As I say, every country has an immigration problem.

So a commission on names and usage could join with my proposal in an earlier column for a UN body to handle worldwide apologies. And while we're at it, there is no reason to be niggardly about possible UN bodies. There is need for yet another UN authority to address a further fall-out from the N-word hoohah. This would be a bureaucracy to resolve the orders of precedence among minorities. It would assign to various groups weighted rights to be offended and penalties to be imposed on those who do the offending. Enforcement would be secured by the U.S. military, which would at a stroke give them something to do and keep the troops at home. The need for such a supra-governmental body became clear to Criticus when it emerged that the offending white aide to the D.C. mayor had been rehired, albeit in a different position. At first it appeared that the mayor had simply consulted the dictionary and realized his mistake. But that was only part of it and evidently the least part of it. The primary reason for the rehiring, as was not at all widely reported in the media, is that the man with the big vocabulary is also the most senior openly gay member of the Washington city government. Gay activists strongly protested his firing. The mayor saw the light.

What the mayor's action appears to mean is that being gay trumps being black. But that may be true only where blacks are in the majority. How would it play in

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Key West? And how would it play if an offender were an Asian in a Latino community? A Latino in an Asian community? And how without an official body to decide do we determine the relative heinousness of the (real, not invented) action of the Chinese-American student at Cal State LA in sending hate e-mail to Latino students *versus* the same (also real) deed performed by a Latino student at UC Irvine against Asian students? Or the many other permutations on this theme that are happening or could be imagined? A commission could create a hierarchy much like the game of bridge, assigning status to groups: this group is equivalent to, say, the Jack of Diamonds, that one to the Queen of Hearts, and the top dog (or is it the bottom dog?) to (no offense intended) the Ace of Spades.

As we evolve ever more into the United Balkan States of America we shall be ever more greatly in need of guidance in these matters. Why not appoint the First Cuckquean as Directress-in-Waiting, so that as soon as she can publicly stop standing by her man, she can take over the reins of the UN Commission on Group Hierarchy (UNCGH). In time the body could also take on the task of determining which given names are unchristian, or if (improbably) the vogue should change, which are Christian enough to be permitted in the Brave New World. One that sounds like a shoo-in is that of an actor whose name Criticus came upon recently. This savvy performer has successfully exploited the fashion for surnames as unisex first names while also slyly employing a Christian male name as a surname, so that if you reverse them the name sounds almost traditional. He could fit in anywhere. He styles himself: Ryan Philippe. In either sequence, the name could pass as male, female, white, Creole, black, Eurasian — Whatever. He has clearly captured the *Zeitgeist.* Let's make him an advisor to the UNCGH. CPR

BOOKS

Everyone Has Tenure Now

BY DAVID F. FAUSTMAN

EVERY EMPLOYER in America knows that workers have become litigation on the hoof. Discrimination charges, harassment claims, and wrongful discharge suits abound. Practically everyone now is in some statutorily protected category, and those that aren't can usually count on the always hungry and creative plaintiffs bar (and their cronies on the bench) to invent some theory of common law protection from firing or demotion.

Gray Davis and the Democrats in Sacramento are set to unleash a new wave of "employee rights" legislation. In the meantime, the president of the United States was impeached over the events surrounding what every employer recognizes as just another of the run-of-the-mill sexual harassment lawsuits that have plagued American businesses for years. What has brought us to this point? Who or what invented this state of affairs that as almost come to be taken for granted? The answer lies in what Walter Olson describes as the "Excuse Factory," an unconsciously connected, though singularly dedicated, web of lawyers, judges, academics, bureaucrats, and legislators who have decided that, without their intervention, the vicissitudes of the workplace in a free market are just too much for the rest of us to handle. These people have created "employment law," the "official version" of which according to Olson, is intended to be a "simple model in which employees sue purely in reaction to egregious acts of employer misbehavior." In this book, Olson examines "the grubbier realities" where that law "is readily pressed into service for settling scores, digging in, and maneuvering tactically for a maximum buyout," and where that law "has un-

The Excuse Factory
How Employment Law Is Paralyzing the American Workplace
Walter Olson
Martin Kessler Books, The Free Press, New York, 1997, 312 pages, $25, cloth

CPR *Contributing Editor David F. Faustman is a practicing attorney in Northern California and a commentator on political, economic, and legal issues.*

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dercut the quest for competence and excellence" in the American workplace. We are forcing our employers, at best, to accept mediocrity, and, at worst, to continue to employ (or pay off) incompetents.

Tenure Track/All Protected Now

Olson correctly identifies the growth of employment law with the left's historic hostility to the rough and tumble of the free market. "Most liberal reformers have seen the insecurity of employment as among the most troubling problems of capitalism." Traditional labor law, with its reliance upon democratic elections among workers, freely negotiated collective bargaining agreements, and an arbitration procedure to adjust grievances, failed to penetrate the entire workplace, so the "reformers" pressed on. "[E]ver wider social benefits were to be had if only private lawyers and litigants could be turned loose on society with the broadest possible powers to sue." Beginning in the 1960s, statutes and common law theories of employment "protection" began to grow, and eventually metastasized into the mess we have today.

Hiring Hell/Discharge Demons

An employer "discriminates," in the traditional sense of the word, in every hiring or firing decision. One worker is hired, while another is not; one worker is fired, while another is not. The new *discrimination* law attempts to deal with the *motives* for the employer's choices between employees.

Employment discrimination laws are, thus, the forerunner of the "hate crimes" of today, where we focus not on the damage inflicted, but on the motives of the perpetrator. Indeed, in discrimination cases, we never even discuss the "harm" until liability (*i.e.*, bad motive) is established. This is necessarily so because, unlike traditional Anglo-American tort law where the harm inflicted is always a bad thing, employment termination *without* a bad motive is perfectly appropriate regardless of the "damage," financial or emotional, suffered by the fired employee.

> Now, as always, the termination process is full of arbitrary and oafish bosses, backstabbing office politics, and perceived unfairness of every kind. Discrimination law offers a remedy, provided a worker agrees to see a link between his ill treatment and his protected group status.

Of course, the number of "protected groups" has multiplied beyond the former slave population that the civil rights laws justifiably sought to help.

> An endless series of analogies to the black condition couple the cars of this modern freedom train, and even groups that were never abducted or enslaved are considered to partake of the moral authority descending from the abolitionists.

Thus, all ethnic minorities, religious minorities, all women, everyone more than 40 years old, anyone who can claim a disability, and (soon in California) homosexuals can invoke the discrimination laws in adverse employment situations. Olson is particularly critical of age discrimination laws. "The campaign to extend oppression theory to older persons always did tempt the gods of absurdity." Older people vote in great numbers, and dominate public office. The great majority of legal distinctions, from Social Security to discount Amtrak tickets, favor this "supposedly persecuted group." Age discrimination law is a one-way deal. Seniors can "sue over alleged preferences to the young, but not vice versa."

> [Congress] gave its highly affluent target group a better deal than racial minorities, since it assured employers who continued to favor the former that they would not have to worry even theoretically about reverse discrimination charges.

Fear of Flirting/ Workplace Cleansing

Sexual harassment law, as the *Wall Street Journal* has observed, is "notable for its capacity to unhinge the sane, terrorize the strong, and obliterate concerns for the norms of reason and common sense." The legal claim of sexual harassment was originally theorized in a law review article by a militant feminist professor in the early '80s, and was rapidly adopted by courts that "jumped in and began regulating sex in the workplace by themselves without any legislative go-ahead." (See also Max Boot, *Out of Order: Arrogance, Corruption and Incompetence on the Bench,* 1998.) There was wide agreement that "quid pro quo" harassment, *i.e.*, "where men threatened job reprisals if women did not go out with them," was unfair (and arguably "discriminatory") to women in the workplace.

THE DEFINITION of "harassment," however, was rather quickly expanded by courts to include anything that was "hostile, intimidating, or offensive." Today, the vast majority of sexual harassment cases involve such "hostile work environment" claims where practically anything a woman (or, more recently, a man) thinks is sexually "offensive" can be the basis for a costly, nasty lawsuit.

Olson is particularly concerned about freedom of speech when harassment law attempts to "cleanse

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not just the workplace, but the wider culture of published or spoken materials that might offend women." The First Amendment is threatened because "harassment law and discrimination law are not private matters," rather they are "distinctly public ... sanctions enforced at the point of the government's guns."

OLSON EXPLAINS that the goal of the "reformers," after women had gained fuller access to the job market, was to protect these women who had "new opportunities" from having to take on "new responsibilities" such as "developing the thicker skin men had been expected to wear all along against indignities." The real concern in sexual harassment law "is that the work atmosphere did not change in response to the addition of women." What we have accomplished through this "pioneering" is to encourage a "sensitive person to secure a job in exactly the wrong kind of workplace ... and then demand that it be cleaned up."

Hostile environment law has much "in common with its contemporaneous development, handicap accommodation law." Both attempt to "force the workplace to adapt to its most fragile and sensitive participants."

The Age of Accommodation

The new employment law was "purportedly aimed at requiring employers to treat workers neutrally and impartially on their merits, all alike." But when it comes to disabilities, "discrimination is quietly being redefined as the failure to treat each employee differently."

Disability law goes far beyond attempting to protect the fewer than 3 million Americans in the three groups traditionally considered disabled (1.7 million deaf; 720,000 in wheelchairs; 400,000 blind). Today, a "disability," including "mental disability," can arguably be whatever some doctor is willing to say it is. As Olson notes, "few laws have done as much ... to make a note from your doctor something you can take to the bank." Disability law is, thus, an open invitation to quackery and fraud. (See also Margaret Hagen, *Whores of the Court: the Fraud of Psychological Testimony and the Rape of American Justice,* 1997.)

The protection of workers with "mental disabilities" has been particularly difficult on employers. There was a time in employment cases when if an employer could prove that the employee was crazy, the employer would win. Now, if the *employee* can prove that he is crazy, *he* wins. What's a company to do? The American employer "that has most often been taken to court by employees with serious mental illness is the U.S. Postal Service." Is it any wonder that "going postal" is a widely recognized term used to describe workplace violence?

On page one of Ambrose Bierce's famous collection of satirical definitions, *The Devil's Dictionary,* is found:

> Ability: The natural equipment to accomplish some small part of the meaner ambitions distinguishing able men from dead ones.

While modern disability law does not yet require companies to employ dead people, there are some disturbing trends. The Ninth Circuit Court of Appeals (whose jurisdiction includes federal courts in California) ruled in a recently published opinion that a company violated the law by terminating a worker who was, according to her doctors, unable to work at all because of a fainting disorder. The Court ruled, however, that the company "failed to accommodate" the employee by not granting her, in effect, an indefinite leave of absence, during which she might get better. In what can only be described as Orwellian, the Court, thus, ruled that the law, which on its face requires the employer to "accommodate" disabled persons so they can work, also demands that the employer "accommodate" an employee by not requiring the person to work at all. It is not surprising that there is gag legislation now circulating on the Internet called The Americans With No Abilities Act ("AWNAA") in which people with no skills or value are protected.

Secure in What?

Olson states that "the quest for socially provided job security" is doomed to fail conclusively. Much of Europe spent much of this century on this "historically misguided experiment," and is left with only an economic joke: "We pretend to work, and they pretend to pay us." Employment lawsuits "must be among the most costly and distracting ... ways of redistributing wealth." Further, as "the forces of litigation and regimentation" advance, diversity is sacrificed and the work place becomes "some homogenized middle ground." Diversity suffers most "when association is compelled."

AMERICAN EMPLOYMENT law at the close of the twentieth century, has become, at its worst, a maze of complicated, confusing, and unpredictable regulations and precedents in which "the right to associate for productive, commercial, or social purpose appears to have no particular standing as a liberty worth guarding." *The Excuse Factory* has made the American workplace at once less efficient and less free. CPR

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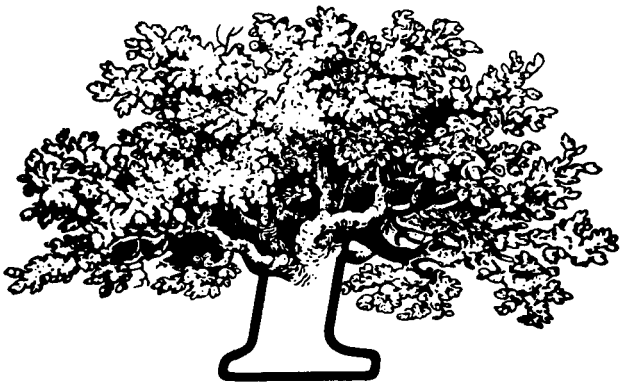

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